United Nations A/C.6/62/SR.15

General Assembly
Sixty-second session

Official Records

Distr.: General
13 November 2007

Original: English

Sixth Committee

Summary record of the 15th meeting
Held at Headquarters, New York, on 25 October 2007, at 3 p.m.

Chairman: Mr. Tulbure ..... (Moldova)

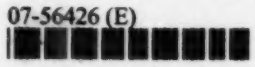
Contents

Agenda item 86: The rule of law at the national and international levels (*continued*)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

07-56426 (E)



The meeting was called to order at 3.10 p.m.

Agenda item 86: The rule of law at the national and international levels (*continued*) (A/62/121 and Add.1 and A/62/261)

1. **Ms. Blum** (Colombia) said that, although the agenda item had been formally introduced at the sixty-first session, the concept of the rule of law had been central to the work of the Organization from the very beginning. The Charter of the United Nations was a pillar of the international rule of law and established principles that all Member States were obliged to respect, including the principles of coexistence, peaceful settlement of international disputes, good faith fulfilment of obligations under international law, respect for human rights and fundamental freedoms, self-determination, legal equality and independence. Among other basic texts, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States emphasized the paramount importance of the Charter in promoting the rule of law, and the Universal Declaration of Human Rights identified the rule of law as the means of protecting those rights.

2. While there was no specific definition of the rule of law at the national level, it could be inferred from the body of international instruments, declarations and resolutions and from the legal literature that the concept encompassed the principle of legality, the protection of human rights and fundamental freedoms and the full exercise of democratic institutions. The United Nations had always devoted great efforts in that regard to strengthening national institutions, in particular domestic administration of justice and electoral systems.

3. There was no consensus on a definition of the rule of law at the international level either, but it was clear from the principles set forth in the Charter and other instruments that it existed and deserved as much attention as the rule of law at the national level. It was perhaps more appropriate to refer to the international rule of law, as a concept distinct from the traditional concept of the rule of law as limited to the nation-State. The basis of the international rule of law was an international legal system that recognized the legal equality of States and set limits on the exercise of power through checks and balances in order to avoid excesses and arbitrariness. The consolidation of the international rule of law, as well as its observance, was a responsibility of all international actors.

4. International organizations played a key role in the establishment, promotion and development of the international rule of law and hence must abide by it. The principle of legality should govern all their actions and decisions. Adherence to their own founding rules and other rules of international law could not be set aside on the pretext of re-interpreting them or pursuing purportedly higher aims. The United Nations, as the global institution par excellence devoted to maintaining peace and security and promoting friendly relations among nations, should set an example of compliance with the international rule of law. The Organization itself was based on a system of checks and balances among its organs, and if any one of them exceeded its mandate the balance would be altered and the rule of law undermined. Moreover, the de facto extension of the powers of some of the organs on the grounds that they faced new challenges would violate the principle of multilateralism on which the United Nations system was based. All organs of the United Nations, without exception, were subject to the principle of legality and to *jus cogens* norms. Her delegation had serious reservations about the theory of implicit powers, which could weaken the principle of legality and result in ultra vires actions taken by international organizations, one of the more common and sometimes subtle ways of undermining the rule of law.

5. The rule of law required strengthening at both the national and international levels in order to achieve the higher ends of peace and development. However, the United Nations currently tended to emphasize the national component. While it was true that much work needed to be done at that level, more attention should be paid to the international rule of law to maintain symmetry between the two dimensions.

6. **Ms. Bolaño Prada** (Cuba) said, although the topic was relatively new on the Committee's agenda, it deserved to be given priority consideration to promote progress towards an international order in which recognized norms of international law were respected. The absence of the rule of law or of clear rules defining its scope could leave room for or even be used to justify the commission of wrongful acts, such as aggression, genocide, drug trafficking and other transnational crimes.

7. The rule of law at the national level should encompass the following elements: a legal system in which all acts harmful to the proper functioning of society were defined by law, full compliance with legal norms, equitable and non-arbitrary application of laws, a structure ensuring full compliance with the law, democracy, justice and social order. Her delegation believed those to be generally applicable principles, but any definition should take into account the specific characteristics of each country and of the different political, economic and social systems, in keeping with the principles of the independence and sovereignty of States.

8. Cuba attached particular importance to the rule of law at the international level. There should be broad cooperation among States in strict conformity with the purposes and principles of the Charter of the United Nations and the principles of international law as an indispensable basis for promoting economic development and social progress as well as peace and security in international relations. States must, first and foremost, comply with the provisions of the international agreements to which they were parties. It was important to avoid double standards in applying international law, re-interpretations by some countries of the provisions of international conventions and the unilateral exercise of extraterritorial criminal and civil jurisdiction by national courts without a basis in international treaties or other obligations deriving from international law.

9. Within the United Nations itself there should be respect for the rule of law. There should be a balance among the principal organs of the United Nations based on their respective mandates under the Charter. It was a matter of concern that the Security Council was becoming involved in legislative matters which were within the exclusive competence of the General Assembly. Her delegation was confident that consideration of the question would result in a reaffirmation of the central position of the General Assembly as the chief deliberative, policymaking and representative organ of the United Nations and its role in the process of standard-setting and the codification of international law, as affirmed in the 2005 World Summit Outcome. The General Assembly was fully authorized under Articles 10 to 14 and 35 of the Charter to consider questions relating to the maintenance of international peace and security. To achieve just and lasting peace through the world, all States, without exception, whether large or small, developed or developing, must comply with the rules of international law.

10. **Mr. Mukongo Ngay** (Democratic Republic of the Congo) said that respect for the rule of law at the national level and recognition of the principles governing the rule of law at the international level created a synergy vital to democracy and good governance and to the maintenance of international peace and security. Promotion of the rule of law at the international level went back to the notion of "peace through law" put forward by the League of Nations, a concept that had also inspired the drafters of the collective security system of the United Nations. Sadly, the system as it currently operated did not live up to the hopes of its originators and the principles of the Charter. The current debate about the reform of the Organization and the need to democratize the Security Council to make it more effective and transparent and provide equitable representation should be seen as an effort to strengthen the rule of law at the international level.

11. To maintain that synergy between the rule of law at the national and international levels, it would be desirable to disseminate knowledge of international law among practitioners of the law, such as judges and attorneys, many of whom were poorly informed or simply unaware of the rules of international law. While commending the organization of seminars and workshops at United Nations Headquarters on the process of treaty ratification, his delegation thought that the impact would be even greater if such seminars were organized in the territories of Member States so that government jurists could participate. Moreover, since universities served as vectors for disseminating knowledge of international law, it would be useful to encourage close contact between universities and those responsible for the nation's international relations.

12. His country sought to contribute to the rule of law by becoming a party to the main multilateral legal instruments; it was, for instance, one of the 67 States Members of the United Nations (out of 192) that had had the courage to recognize the compulsory jurisdiction of the International Court of Justice pursuant to article 36, paragraph 2, of its Statute. The post-conflict situation in his country, where sexual exploitation of women and children remained a concern, to cite just one example, was an argument in itself for promoting the rule of law. Breaking the cycle

of violence, putting an end to impunity and laying the foundation for a democratic society — in other words, re-establishing the rule of law — constituted a major challenge, one that required in particular the satisfactory administration of justice.

13. The challenge was one that no State in a post-conflict situation could face alone, and that was the reason for his country's recourse to the International Criminal Court. The Court was about to begin its first trial, the case of *The Prosecutor v. Thomas Lubanga Dyilo* and had had a first appearance in the case of *The Prosecutor v. Germain Katanga*. The fact that Congolese nationals were the first alleged criminals to be referred to the new Court reflected the need for justice felt by the Congolese people. Although his delegation was aware that primacy of jurisdiction by the national courts was the rule, the current criminal justice system in his country was inadequate to meet the post-conflict challenges of dealing with such crimes as rape as a weapon of war, organized crime and money-laundering, arms trafficking and illegal exploitation of natural resources. Moreover, despite serious efforts to improve the penitentiary system, nearly everywhere prison conditions were deplorable, even life-threatening. Given the situation, the Government's determined efforts to create a just, reliable, honest and effective system of justice in accordance with the principles of the Charter of the United Nations and of international law and to carry out its national plan of action for the promotion and protection of human rights merited international technical and financial assistance.

14. His delegation therefore welcomed the establishment of the Rule of Law Coordination and Resource Group within the Secretariat. It believed that the new Group, in addition to the functions already entrusted to it, should have available a cooperation mechanism for providing assistance in investigating and in uncovering, gathering and preserving evidence to bring to justice the perpetrators of the most serious crimes in countries in a post-conflict situation.

15. **Mr. Ayua** (Nigeria) said that the rule of law was the bedrock of peaceful relations between individuals and among nations. Its cardinal principles — justice, legality, equality, separation of powers and the independence of the judiciary — were a sine qua non for peaceful coexistence among States. The 2005 World Summit Outcome, in which the international community had reiterated its commitment to an international world order based on the rule of law, contained a call for the establishment of a rule of law assistance unit within the Secretariat. He therefore welcomed the establishment of the Rule of Law Coordination and Resource Group, to be chaired by the Deputy Secretary-General. It was to be hoped that the Group, which should be provided with all necessary support in the discharge of its duties, would conform to the role envisaged in the World Summit Outcome. According to the Secretary-General's report (A/62/261, para. 9), 12 out of 52 United Nations bodies, including the Office of the Special Adviser on Africa, were not involved in any activities relating to the promotion of the rule of law; yet Africa's experience had shown that there could be no development without peace and security or without law and order. The Office should, along with other relevant units, be active in promoting the rule of law on the continent.

16. The rule of law should be seen as a dynamic, evolving concept that ensured the expansion of substantive freedoms and rights to vast numbers of people, since, underpinned by the necessary political will and good governance, it was the only viable mechanism to address the problems of property, tyranny and underdevelopment. The adoption of General Assembly resolution 61/39 had been an important step in that regard, since it showed the importance that the international community attached to the subject. Practical measures were needed, however, and his delegation looked forward to a more substantive report by the Secretary-General at the sixty-third session on action that had been taken. What was required was a new international legal order that adopted preferential trade policies in favour of developmentally distressed countries or countries emerging from conflicts, new laws against corruption, and new international charters that would aid the development of impoverished States. Lastly, his delegation urged all States that had not yet done so to consider accepting the compulsory jurisdiction of the International Court of Justice, which constituted a peaceful means for the settlement of international disputes.

17. **Mr. Kanu** (Sierra Leone) said that his delegation attached great importance to international law, the rule of law and justice. Specifically, the restoration of the rule of law in Sierra Leone, after 11 years of a profitless conflict, was essential if the root causes of the conflict were to be resolved and a just and

equitable society established. His Government's commitment to the rule of law was illustrated by its request for the establishment of the Special Court for Sierra Leone in June 2000. The Court was fully operational and its jurisprudence had been cited by other ad hoc tribunals.

18. During the sixtieth session, his delegation had called on the International Law Commission to formulate a set of rule of law principles in international law and it was disappointing that the proposal, which was no mere intellectual exercise for his delegation, had been ignored: the lasting scars of the war in Sierra Leone served as a reminder of the critical importance of the rule of law, the breakdown of which had led to the blot on the country's history. Sierra Leone was fortunate in having a political leadership that was committed to the rule of law: President Koroma, who had recently taken up the torch from President Kabbah, had stressed the importance of adherence to law and order, human rights and an independent judiciary. Indeed, he had committed himself to strengthening the institutions responsible for the dispensation of justice.

19. The rule of law was crucial to development, in that it ensured that resources were distributed justly and corruption minimized, so that humanitarian development assistance would be effective. His delegation therefore welcomed the support of the Peacebuilding Commission.

20. At the international level, the Security Council had, of course, primary responsibility for the maintenance of international peace and security. Strengthening the rule of law, however, was not the exclusive domain of the Council; the General Assembly and its committees also had an important role to play. It was, however, regrettable that the development of the principles of international law, especially in the area of transitional justice, had not been accompanied in equal measure by practical assistance for States or international organizations to help them meet their responsibilities. In that connection, he urged universal acceptance of the Rome Statute of the International Criminal Court, which his Government pledged to incorporate into the country's domestic legal system very shortly. He urged States to ratify international instruments and fulfil their treaty obligations by incorporating such instruments into their national legislation. That was the most basic way to enhance the rule of law at the international level.

21. The conflicts in Sierra Leone, the Democratic Republic of the Congo and many other countries demonstrated the weakness of the international community's capacity to respond to situations of impunity. He called on all States to attend a meeting, jointly hosted by his country and Canada, to discuss the Justice Rapid Response mechanism which aimed to address that weakness.

22. **Mr. Shim** (Malaysia) said that current world events clearly demonstrated the need to reawaken awareness and understanding of the rule of law at the international level. At the national level, Malaysia's criminal justice system was anchored in the Federal Constitution, the Criminal Procedure Code and the Evidence Act. The rule of law was thus the guiding principle of the country's criminal justice system. As an additional measure, the Government proposed to establish a committee to monitor the implementation of international humanitarian law in Malaysia and recommend the legislative action required for the country to accede to the relevant international humanitarian law instruments. At the international level, Malaysia participated in efforts to strengthen the international justice system, raise levels of compliance monitoring and provide more coherent responses to perceived breaches of international law, sometimes in the form of Security Council and General Assembly resolutions. It also worked for greater accountability for criminal acts, by whomever committed.

23. Consultations at the sixty-first session, in pursuance of the recommendation of General Assembly resolution 61/39 that the Committee should choose one or two sub-topics to facilitate a focused discussion for the subsequent session, had seen a divergence of views on the topics to be discussed. It was to be hoped that that scenario would not be repeated; but, should agreement be reached on the list of topics, there remained the question of the practical use of such a discussion. The Committee's workload was heavy enough as it was. As for specific topics for discussion, his delegation noted that a number of delegations wished to discuss the Rule of Law Assistance Unit. Since, however, there had been general agreement on the need to establish such a body, which would enhance coherence and coordination across the United Nations and with other actors, discussions concerning its formation should take place in plenary meetings and not in the Sixth Committee, given the moves to revitalize the General Assembly as the chief

deliberative, policymaking and representative body of the United Nations. His delegation therefore proposed that the establishment of the Unit should be taken up under agenda item 48. Once established, the Unit should be requested to provide periodic briefings and an annual report on its activities, and Member States would have the opportunity to discuss every aspect of its work in the plenary meeting.

24. **Mr. Koh** (Singapore) said that the rule of law was a crucial concept, in that it provided an equitable and predictable framework within which States could conduct relations with one another. Without such a framework, every decision would be capricious and every outcome uncertain. There was no simple or universally agreed definition of the term; but, at its most basic level, the law set out legitimate expectations of what was acceptable conduct and what was not. Action to enforce the law took place in accordance with known and established procedures. The rule of law meant that no party, whatever its status or interests, could act in an arbitrary manner.

25. In itself, however, the rule of law did not guarantee that only good laws would be enacted or bad laws repealed. Nor did it specify the appropriate balance between various interests. Much depended on the social, economic, political and cultural context of the society concerned.

26. For Singapore — which, as one of the most densely populated countries in the world, was multiracial, multilingual and multireligious — the rule of law had been a cornerstone of its stability. Whereas in homogeneous societies much was understood without the need for codification, that was not the case for heterogeneous societies like Singapore, where there was potential for strife and misunderstanding between different ethnic groups. In such circumstances, the fact that the rules were transparent to everyone and applicable to everyone meant that friction arising from different ethnic, cultural and religious perspectives could be reduced. The same applied at the international level. The effect of globalization was that the action of one country had an impact on others. The rule of law therefore set a certain benchmark, which, side by side with a recognition of and respect for the world's diversity, would enable the nations of the world to coexist and cooperate.

The meeting rose at 4.05 p.m.

United Nations A/C.6/62/SR.16

General Assembly
Sixty-second session

Official Records

Distr.: General
19 November 2007

Original: English

Sixth Committee

Summary record of the 16th meeting
Held at Headquarters, New York, on Friday, 26 October 2007, at 10 a.m.

Chairman: Mr. Tulbure ..... (Moldova)
later: Ms. Orina (Vice-Chairman) ..... (Kenya)

Contents

Agenda item 86: The rule of law at the national and international levels (*continued*)

Agenda item 108: Measures to eliminate international terrorism (*continued*)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

07-56547 (E)

The meeting was called to order at 10 a.m.

Agenda item 86: The rule of law at the national and international levels (*continued*) (A/61/121, A/61/121/Add.1 and A/62/261)

1. **Mr. Mongkolnavin** (Thailand) said that Thailand strongly believed that adherence to the rule of law at the national and international levels was essential for a peaceful and prosperous community. As noted by the 2005 World Summit, it was also a linchpin in the nexus between development, peace and security and was essential for the protection of human rights and fundamental freedoms.

2. At the international level, the Charter of the United Nations, together with the Universal Declaration of Human Rights and other multilateral treaties, old and new, must be adhered to and applied as guidance for global interactions. Promotion of adherence to the rule of law by the United Nations itself was therefore indispensable.

3. His delegation was pleased to note that a large of number of United Nations entities had been involved in work relating to the promotion of the rule of law, many of them playing a valuable role in enhancing capacity-building in Member States. His delegation also appreciated the recent establishment of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit. He looked forward to receiving more information on their work, especially in regard to the three "baskets" of rule of law activity identified by the Secretary-General in his report (A/61/636-S/2006/980).

4. At the national level, although the diversity of legal systems had to be respected, each State must do its part in the global quest for adherence to the rule of law. It was incumbent on each Member State to ensure that the rule of law was duly observed within its territory. Failure to do so could lead to a state of lawlessness or could breed or reignite conflicts. As global boundaries increasingly diminished, each country bore greater responsibility than ever to ensure that its actions did not affect its neighbours or the world at large.

5. Although Thailand had recently undergone a challenging period, its commitment to the rule of law had never lessened. Indeed, the Government had become even more vigilant in its adherence to the rule of law. The first-ever referendum on the country's new Constitution and the general election scheduled for year's end were strong testimony to that.

6. Over the years Thailand had striven continuously to foster the rule of law, both internally and internationally. In 2005 it had hosted the Eleventh Congress on Crime Prevention and Criminal Justice, which had led to the adoption of the Bangkok Declaration. During the 2007 Treaty Event, Thailand had deposited instruments of accession to the International Convention against the Taking of Hostages and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, thus re-emphasizing its firm and genuine commitment to the observance of international law.

7. Currently, Thailand was working with Chile, Sweden and South Africa in the Four Nations Initiative, which sought to promote improved governance and management of the United Nations Secretariat. The United Nations must practice what it preached, for good governance lay at the core of the rule of law. Moreover, better governance and management would help to enhance the Organization's credibility, both internally and externally. As part of the effort to improve governance, the United Nations should put into place a new system of internal justice to correct the drawbacks of the existing system and provide staff with a fair and professional dispute settlement process.

8. In its work on the rule of law, the Sixth Committee, should not duplicate activities being carried out by other United Nations bodies or elsewhere and should focus on concrete outcomes. Thailand supported the proposal made in that regard by Cuba on behalf of the Movement of Non-Aligned Countries (see A/C.6/62/SR.14).

9. **Mr. Arévalo** (Chile) said that his delegation welcomed the creation of the Rule of Law Assistance Unit, which would ensure continued and heightened attention to the topic. The rule of law was a common thread that ran through all relations between States, harmonious social interaction within States and the work of the United Nations and its various organs, which themselves were subject to the rule of law. Chile appreciated, in that regard, the steps being taken to bring the system for the administration of justice at the United Nations into line with international standards. It also applauded the Organization's concern about the criminal accountability of its officials on mission, and

it welcomed the measures adopted by the Security Council to improve the sanctions regime.

10. The rule of law was an extremely broad topic which could be addressed from many perspectives, and a precise and focused approach must be taken in order to deal with it effectively. The Committee should establish clearly what it intended to accomplish through its consideration of the topic. Otherwise, it might find itself engaged in lengthy and fruitless discussions that merely repeated firmly established principles. On the other hand, it would be inappropriate to introduce into the discussion elements which gave rise to particularist approaches or differential treatment of the various issues related to the rule of law at the national and international levels. The rule of law was founded on respect for certain universally accepted principles; unless they were strictly observed, the objectives of the exercise that the Committee was undertaking would not be achieved.

11. The first question that might be asked was whether the norms and institutions put in place by the international community were sufficient, or whether they needed to be augmented in some way in order to give real effect to the rule of law. Norms governing the threat or use of force, the peaceful settlement of disputes, human rights, international humanitarian law and international criminal law constituted a solid legal framework that might be said to meet the requirements for the rule of law in both its national and its international dimensions. However, for a variety of reasons, including lack of the means or the technical capacity to fulfil some obligations and failure to adopt domestic rules requiring compliance with international treaties, States did not always comply with their international obligations. The issue of non-compliance, and the reasons for it, should be one of the focuses for the Committee's consideration of the topic.

12. Other areas that might be examined in greater depth with a view to consolidating the rule of law included conflict prevention mechanisms, preventive diplomacy and multilateral mechanisms for dealing effectively with grave humanitarian crises. In that connection, strong support should be provided for the activities of the Peacebuilding Commission, particularly with respect to rebuilding judicial and law enforcement systems, which constituted the underpinnings of the rule of law.

13. The Committee might consider, as a sub-topic for discussion at a future session, the strengthening of domestic and international criminal justice systems as an effective means of combating impunity, the denial of justice or the failure to respect the rules of due process and other guarantees inherent in the rule of law.

14. **Mr. Lamine** (Algeria), reaffirming his delegation's attachment to the ideal of the rule of law and its desire to see respect for international legality prevail in inter-State relations, said that the newly established Rule of Law Assistance Unit would need to be strengthened and, above all, be protected from political considerations, particularly as the rule of law was a matter that had to do with the missions of various United Nations organizations, funds and agencies. It was a cross-cutting topic, about which a number of delegations had signalled the need for greater clarity in order to identify the perspective from which it would be approached.

15. The development of the rule of law at the national level contributed to economic and social development and to the furtherance of peace and justice. Better coordination was needed in order to respond to the needs of Member States seeking assistance in addressing gaps and deficiencies that might hinder the development of their administrative, political and judicial systems, especially in post-conflict situations. Certainly, the United Nations had a leading role to play in that regard, but in so doing it should seek to support, not supplant, local authorities, respecting the traditions and the social and cultural traditions of the country in question.

16. At the international level, the role of the International Court Justice was of fundamental importance in strengthening the rule of law. Some had even suggested that the Court should hear cases concerning the legality of actions taken by other United Nations bodies, creating a sort of separation of powers at the international level. The growing trend towards the threat or use of force necessitated a more proactive role for the Court in reinforcing the rule of law. The United Nations should set an example by, inter alia, ensuring respect for the functions and powers of each of its main bodies.

17. Algeria believed that the Committee should engage in more in-depth discussion of the topic and of the future relationship between itself and the Rule of

Law Assistance Unit before embarking upon discussions of specific aspects of the rule of law.

18. **Ms. Celis** (Bolivarian Republic of Venezuela) said that her Government hoped that the topic of the rule of law would be treated in a balanced manner and that the discussion would be grounded in the principles of self-determination of peoples and non-interference in the internal affairs of States. At the national level, her country attached great importance to international law as one of the sources of domestic law. The provisions of the international human rights conventions and other instruments had been incorporated into domestic legislation and enshrined in the Constitution.

19. At the international level, the realization of a system in which the rule of law prevailed would remain a utopian aspiration until a democratic regime was established within the United Nations. Excessive politicization of the Security Council had often hindered implementation of the mandates of the General Assembly, giving rise in recent years to repeated violations of the sovereignty of States, interference in their internal affairs and military occupations that were in clear violation of international law. The United Nations had thus far been unable to prevent the application of double standards with respect to compliance with internationally agreed rules, which had resulted in discrimination and selectivity, generating a climate of injustice and damaging the Organization's credibility. Only by democratizing and strengthening the United Nations would it be possible to ensure that international law was equitably applied and enforced.

20. **Ms. Mwaipopo** (United Republic of Tanzania) said that absence of the rule of law invited anarchy, impunity, abuse of human rights and disregard for the tenets of good governance and democracy. Strengthening of the rule of law was therefore crucial in order to foster greater freedom, sustained peace and security, particularly in countries emerging from conflicts.

21. Her delegation attached high significance to treaties and other internationally binding instruments and commended the United Nations Office of Legal Affairs for promoting their ratification and implementation through the organization of annual treaty events. It also applauded the work of the international tribunals for Rwanda and the former Yugoslavia, the Special Court for Sierra Leone and the newly established Special Tribunal for Lebanon in strengthening the international rule of law by combating impunity for individuals accused of committing the most serious crimes.

22. Her delegation also commended the International Criminal Court for its efforts to end impunity and encouraged cooperation between the Security Council and the Court to bring to justice the perpetrators of the gravest international crimes, namely, war crimes, crimes against humanity and genocide. The United Republic of Tanzania welcomed Japan's accession to the Rome Statute and encouraged all Member States to accept the Court's jurisdiction with a view to strengthening the rule of law.

23. At the regional level, the African Union and other subregional mechanisms were dedicated to promoting and upholding the rule of law. Her delegation was optimistic that the African Court on Human and Peoples' Rights and the East African Court of Justice, which the United Republic of Tanzania was proud to host, would contribute immensely to strengthening the rule of law, consolidating peace and reconciliation, and finally bringing economic prosperity to the African region.

24. Her Government was fully committed to human rights, good governance and the rule of law and had pursued numerous public-sector reforms, including programmes to improve its civil service, local government, public financial management, legal sector and health sector. Her delegation welcomed the establishment of the Rule of Law Assistance Unit and pledged its unflinching support for the work of the United Nations in strengthening the rule of law at the national and international levels.

25. **Mr. Mikanagi** (Japan) said that Japan strongly supported the activities of the United Nations with regard to the rule of law. Japan had been a strong backer of the International Court of Justice and continued to accept its jurisdiction. It also supported the International Tribunal for the Law of the Sea and its role in dispute settlement. In the area of criminal justice, Japan had supported the various ad hoc and hybrid international criminal tribunals, including the Extraordinary Chambers in the Courts of Cambodia. Japan was also providing technical support to help establish the rule of law in developing countries, especially South-East Asian countries. In addition, it

had recently become a party to the Rome Statute of the International Criminal Court. His Government appreciated the Court's role in combating impunity and hoped that the number of States parties to the Rome Statute would increase.

26. His delegation welcomed the activities of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit in strengthening United Nations efforts through better coordination. The Secretary-General's report (A/62/261) showed that many departments in the United Nations were carrying out rule of law activities. If duplications and other problems were occurring as a result of lack of coordination, the departments concerned must take measures to solve such problems. The various departments should, within their existing resources, continue to support the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit. Japan looked forward to discussing the Secretary-General's report during the sixty-third session.

27. **Mr. Ben Lagha** (Tunisia) said that globalization and increased interaction among subjects of international law had made ensuring a commitment to an international order based on the rule of law more necessary than ever. Indeed, such a commitment was increasingly seen as the condition for peaceful coexistence of States.

28. Given that the rule of law was a cross-cutting topic that had to do with the activities of the United Nations in almost every area, his delegation welcomed the establishment of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit and underscored the need to provide them with the means necessary to enable them to perform their roles within the framework of a clear mandate and of regular and ongoing interaction with the General Assembly.

29. In view of the wide variety of issues that might be raised under the heading "the rule of law", the Sixth Committee should exercise great caution in identifying sub-topics for future discussion, taking care to give balanced treatment to the national and international dimensions and to avoid duplicating the discussions going on in other United Nations forums. The Committee should focus strictly on the legal aspects of the subject, taking a pragmatic approach that emphasized operational objectives, and should avoid giving the impression that it was trying to impose pre-established models on Member States.

30. One possible sub-topic that would encompass both the national and the international dimensions of the rule of law might be the provision of technical assistance to Member States that requested it, particularly those in post-conflict situations, and especially with regard to the incorporation of international instruments into domestic law. One way of choosing sub-topics might be to ask what value the Committee's discussion might add to the work on the topic under way elsewhere and what contribution the Committee might make towards enhancing the effectiveness of the rule of law activities undertaken by the various United Nations entities. In order to ensure that the Committee's work on the rule of law was effective and constructive, close interaction and synergy with the Rule of Law Assistance Unit would be imperative.

31. **Mr. Park** Hee-kwon (Republic of Korea) said that his delegation, believing that the rule of law was a safeguard for good governance in the national sphere and that it was a key element for maintaining peace and security in the international sphere, welcomed the Committee's discussion of the topic and regarded it as an important follow-up to the 2005 World Summit and a good opportunity for Member States to renew their commitment to the rule of law.

32. Activities in the three "baskets" identified by the Secretary-General in his report (A/61/636-S/2006/980) should be well coordinated. His delegation therefore strongly supported the establishment of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit and looked forward to seeing them both fully operational. Rule of law activities required adequate financial and human resources, and the Republic of Korea was committed to providing such resources to assist countries in building their capacity to promote the rule of law. It had provided official development assistance funds to a number of countries to help them in dealing with a variety of issues, including crime prevention, forensic investigations, criminal justice, control of drug-trafficking, prevention of money-laundering, maritime security and cyber-security, and it was the host country for the United Nations Governance Centre, which sought to enhance United Nations rule of law activities through the study of good governance and the sharing of best practices with Member States.

33. His delegation supported the idea of choosing sub-topics for focused discussion each year and

favoured the selection of "criminal justice at the national and international levels" as the sub-topic for 2008.

34. **Mr. Muburi-Muita** (Kenya) said that the Rule of Law Assistance Unit should be strengthened because the rule of law was the mainstay of good governance in any democratic system and was therefore pertinent to the management of global affairs. In fact, there was no viable alternative to it.

35. Since the role of the International Court of Justice in the peaceful settlement of disputes could not be overemphasized, he called on all Member States to recognize the Court's compulsory jurisdiction. Larger contributions to the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice would greatly advance the rule of law at the international level. The United Nations should itself make full use of the Court's competence by requesting advisory opinions and, in that connection, he was pleased that the possibility of authorizing the Secretary-General to request such opinions was being discussed. Furthermore, the jurisprudence emanating from the tribunals established by the Security Council should be absorbed into international criminal law.

36. The fact that rule of law and transitional justice initiatives had been incorporated into the mandates of recent peacekeeping and peacebuilding missions and that the General Assembly was examining the question of the criminal accountability of United Nations officials and experts on mission would undoubtedly promote the rule of law in United Nations missions.

37. A thorough evaluation of developing States' specific needs would heighten the effectiveness of the technical assistance and capacity-building measures of the United Nations. Steps should also be taken to facilitate the participation of those States in meetings of highly specialized agencies and bodies such as the United Nations Commission on International Trade Law (UNCITRAL). Since an awareness of the links between peace and development on the one hand and the cultural values and aspirations of societies on the other was central to maintaining the rule of law, he commended the General Assembly for recognizing the period September 2007 to September 2008 as the year commemorating the Ethiopian Millennium.

38. At the national level, his Government had introduced comprehensive reforms in the sectors of governance, law and order and justice. The purpose of those reforms was to strengthen the institutions dealing with corruption, boost the number of judges, magistrates and district courts, increase legal services at district level and improve the prosecution and litigation counsel service. The capacities of the police and prison services were being upgraded to meet the growing demands of the criminal justice system. Consideration was likewise being given to introducing small claims courts and a national legal aid scheme as a means of widening access to justice.

39. Lastly, he called on all States to use and expand the frameworks of fair rules already existing on many issues at the international level in order that the equity desired by all might be achieved.

40. **Ms. Naidu** (South Africa) said that a discussion of the rule of law at the national and international levels was extremely useful. Since the end of apartheid, national law in South Africa had been brought into step with international law and the courts had endeavoured to administer justice in a manner which upheld the spirit, purpose and ethos of the Bill of Rights, which had been inspired by the Universal Declaration of Human Rights.

41. The role of the United Nations in setting standards ensured that international law influenced the national judicial system and heightened the awareness that rights must be protected by law. That meant ensuring that disputes over rights could be submitted for adjudication to a competent, impartial and independent tribunal, and that State action could be analysed and justified rationally in a system whose operation could be tested for compliance with the law.

42. The establishment of the Rule of Law Coordination and Resource Group would fortify United Nations rule of law activities. For that reason, every effort must be made to bolster the Group's role in identifying areas of common concern and in facilitating cooperation and coordination. Her Government therefore supported the funding of the Rule of Law Assistance Unit. In addition, the Group's expertise could be utilized in countries emerging from conflicts to foster adherence to the rule of law and build confidence in the legal and judicial system, thereby creating the prerequisites for sustainable peace and development. In post-conflict situations, there was a need to deal with past abuses through formal and informal mechanisms for resolving grievances and to

create an impartial and accountable legal system. To that end, it was necessary to establish an effective law-enforcement apparatus, an open judicial system, fair laws, a humane correctional service and appropriate penalties for crimes.

43. **Ms. Wilcox** (United States of America) said that her Government strongly advocated the rule of law at the national and international levels. International law played a critical role in world affairs in as much as it was vital to the resolution of conflicts and was a powerful force in the search for freedom. The United States therefore helped to develop international law, relied on it and abided by it.

44. The United States strongly supported international legal mechanisms such as the International Court of Justice and approved of the Security Council's use of legal mechanisms and institutions to promote international peace and security by ensuring accountability for genocide, war crimes, crimes against humanity and terrorism. Her Government had pledged $5 million towards the start-up costs of the Special Tribunal for Lebanon, whose findings would be crucial in calling to account the terrorist bombers who had killed the former Lebanese Prime Minister Rafiq Hariri and others. It had also contributed over half a billion dollars towards the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone.

45. The targeted sanctions regimes established by the Security Council contributed to the development of international law by imposing international obligations. Such sanctions remained a tool for championing international peace and security, and their adverse impact on innocent civilians could be minimized by careful targeting. Those regimes were an indispensable means of combating international terrorism and the proliferation of weapons of mass destruction and establishing stability in countries such as Sudan, Côte d'Ivoire, Liberia and the Democratic Republic of the Congo. Past concerns about the need for Security Council sanctions committees to follow fair procedures had been addressed, inter alia, in Security Council resolution 1730 (2006).

46. Other parts of the United Nations system were also influential in promoting the rule of law. For example, UNCITRAL had encouraged the emergence of international legal regimes which could enhance commerce in all geographic regions and for States at all levels of development, while the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime was spearheading efforts to help States to accede to and to implement international counter-terrorism conventions and protocols.

47. International law played an outstanding role in the United States Constitution and domestic law. In many instances the national courts were authorized to interpret and apply international law. Every year, her Government concluded hundreds of international agreements and treaties and it served as a depositary for approximately 200 multilateral treaties. Furthermore, the State Department's Treaty Office published useful information about the treaties to which the United States was a party on a public web page.

48. At the national level, the commitment of the United States to advancing the rule of law was demonstrated by its endeavours to assist other States to strengthen their legal, judicial and law-enforcement institutions and to combat the production and trafficking of illicit drugs. It was determined to promote the ratification and implementation of the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption which, as the first legally binding global instruments on those subjects, served as new tools for amplifying international cooperation, including mutual legal assistance.

49. In order to achieve a more holistic approach to developing justice institutions, several Government organizations collaborated in the delivery of integrated and strategically focused rule of law assistance; they included the State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) and the United States Agency for International Development (USAID). INL assisted countries in their efforts to strengthen institutions in the criminal justice sector, and every year it invested over $350 million in such programmes all over the world. USAID was investing over $301 million in more than 50 countries to promote broad-based reform of the justice system. Specialists from the International Criminal Investigative Training Assistance Program (ICITAP) and the Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) from the Department of Justice had helped INL and USAID to

conduct rule of law activities worth $150 million in 2006.

50. The United States provided wide-ranging technical assistance in the area of the rule of law by helping States to train police, implement criminal justice reforms, secure human rights protection, improve court administration, promote judicial reform, train judges and lawyers, modernize legal education, create bar associations and improve access to justice. Her Government was striving to incorporate policing projects in programmes covering the rule of law and human rights, and it already had a solid track record of community-based policing programmes in Africa and Central America. Moreover, it was scrutinizing the role of traditional legal systems in contributing to the rule of law.

51. Although the practical recommendations contained in the Secretary-General's report (A/61/636-S/2006/980) concerning closer coordination of the many players within the United Nations system which provided assistance in respect of the rule of law were commendable, and although the establishment of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit were promising developments, the Unit should be funded from existing resources. The idea of enhancing quality control over United Nations documentation in the area of the rule of law was worth considering. Moreover, in view of the importance of bilateral assistance in the rule of law area, the United Nations should coordinate its rule of law activities with non-United Nations actors and donors.

52. The Sixth Committee's future work on the agenda item under consideration should be practice-oriented. Some of the topics proposed were not focused enough to provide a constructive basis for the Committee's work. It would therefore be better to concentrate on ways in which the existing United Nations rule of law assistance programmes could be better coordinated and made more effective. The inventory of the current activities of the parts of the United Nations system devoted to the promotion of the rule of law at the national and international levels contained in the Secretary-General's interim report (A/62/261) would provide a good starting point for the Sixth Committee's deliberations. Alternatively the Sixth Committee could centre its studies on transitional justice at the national level, since that was an essential issue for societies striving to emerge from conflict.

53. **Mr. Al Saied** (Kuwait) said that fostering respect for and compliance with the rule of law at the national and international levels was of the utmost importance in enabling the international community to live in peace and security, achieve economic growth and sustainable development, eradicate poverty and hunger and protect human rights.

54. Kuwait was a constitutional democracy where sovereignty was vested in the people. Everyone's rights and freedom were protected. Justice, freedom and equality were the main pillars of society. The Constitution embodied the rule of law, since it provided for the separation of the powers of the executive and the legislature and ensured the independence of the judiciary. All citizens had equal rights and duties. Freedom of the press and of expression were guaranteed, as was freedom of association.

55. His Government abided by international law. It upheld the principle of maintaining international peace and security and of not using the rule of law as a pretext to interfere in the affairs of other States, or to encroach on their sovereignty. All States should refrain from the use of force and the threat of its use and should settle conflicts between them by peaceful means.

56. The rule of law must be strengthened as it laid the foundations for social and economic justice and the enjoyment by every human being of the right to development. It was therefore vital to buttress the rule of law through the exercise of democracy within the United Nations system at all levels.

57. **Mr. Eriksen** (Norway), having welcomed the establishment of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit, commended the Unit's work thus far with regard to the coordination of United Nations rule of law activities. The Secretary-General's interim report (A/62/261) made it clear that such coordination needed to be strengthened. His delegation therefore looked forward to the continued implementation of the Unit's workplan, which contained a number of important tasks related to the rule of law, such as the development of a coordinated workplan for the entire United Nations system, the identification of priority gaps in the Organization's capacity and the establishment of best practices based on the international experience gained in connection with rule

of law assistance. The General Assembly should provide the Unit with sufficient resources to carry out its work effectively. Moreover, that funding should come from assessed contributions so as to ensure financial security.

58. With regard to the Committee's discussions on the rule of law at the next session, the sub-topics selected should be clearly defined and sufficiently narrow to ensure focused and streamlined discussions and to avoid the risk of duplicating the work of other forums. His delegation therefore attached great importance to the consultations regarding the current session's resolution on the rule of law.

59. Promotion of the rule of law was a priority for his Government and was therefore an integral part of its international activities. For example, Norway had established a standby force for civilian and human rights efforts in crisis situations. The force, composed of civilian experts, had provided rule of law assistance in Afghanistan, Bosnia and Herzegovina, Georgia and Moldova. The promotion of international criminal justice was another important objective. Norway supported the international criminal tribunals and the International Criminal Court by such means as advocating the widest possible accession to the Rome Statute. It was also necessary to preserve the legacy of the special criminal tribunals. In order to strengthen national capacities to investigate and prosecute international crimes, Norway was providing funding for the Court's Legal Tools Project, an important resource base for national authorities, practitioners of law and scholars around the world.

60. The International Court of Justice was the principal body entrusted with the task of upholding the rule of law at the international level. However, only 65 of the 192 States Members of the United Nations had accepted the Court's jurisdiction in accordance with article 36, paragraph 2, of its Statute. Since its establishment, the Court had clearly demonstrated its vital and constructive role in conflict resolution. Both Member States and the international community would benefit greatly from wider acceptance of the Court's jurisdiction, which could be tailored to meet the needs of individual States. Norway would continue its active efforts to promote acceptance of the Court's jurisdiction among Member States.

61. **Ms. Schonmann** (Israel) expressed strong commitment to the purposes and principles of the Charter of the United Nations and said that it was necessary to promote the concept of an international order based on the rule of law. Adherence to the rule of law was a cardinal element of her country's domestic legal system and a central component of its national security. Her Government was committed to the principle of legality, the balanced separation of powers, the protection of human rights and the guaranteeing of due process and access to justice for all. Fundamental human rights such as the right to liberty, freedom of expression and the right to privacy were protected by the basic laws of Israel and by a solid body of jurisprudence established by the Supreme Court. Promoting the rule of law at the national level was a vital means of furthering compliance with the international legal order.

62. Israel supported the numerous United Nations activities to consolidate the rule of law through the codification and development of international law. The rule of law was a fundamental element of conflict resolution, peacekeeping operations and nation-building in emerging democracies. The provision by States of legal assistance and training programmes for other States which were seeking to establish legal systems and enhance the rule of law might prove to be an enriching experience for all concerned, as well as a useful basis for dialogue.

63. Given the numerous actors participating in the wide range of rule of law activities, Israel supported the establishment of the Rule of Law Coordination and Resource Group. In its future work on the rule of law, the Sixth Committee would be well advised to adopt a practical approach focusing on technical assistance and capacity-building in order to make for greater compliance with international obligations.

64. **Mr. Shah** (Pakistan) said that upholding the rule of law at the national and international levels would ensure peace and security and equitable development opportunities for all. He therefore welcomed the establishment of the Rule of Law Assistance Unit. His Government supported the endeavours of the United Nations to promote the rule of law.

65. The different rule of law baskets should be dealt with in the relevant committees. Debate on those issues in the plenary required the establishment and coordination of dedicated rule of law teams. That would be a resource-intensive exercise which might prove difficult for small delegations, especially if more

baskets were added. He was therefore in favour of consolidating the agenda within respective committees.

66. The subject of the rule of law should be delimited in order to ensure that the committees' work in that area did not overlap. In addition it would be advisable for the Sixth Committee to identify the scope of the rule of law at the national and international levels. No new mandates should be created through the interpretation of existing mandates. His delegation did not support a monitoring role at national level for any United Nations subsidiary bodies or entities, apart from the United Nations Development Programme. Activities aimed at developing the rule of law at national level should be carried out only at the request of, and in close consultation with, the national or host Government. Lastly, as far as sub-topics for further consideration were concerned, he supported the proposal put forward by the Movement of Non-Aligned Countries.

67. **Mr. Baghaei Hamaneh** (Islamic Republic of Iran) said that the rule of law and justice was of crucial importance at the national and international levels. Adherence to the rule of law was essential for building an order where right would prevail over might and for progressing towards a secure and prosperous world. For the Islamic Republic of Iran, which was situated in a region long torn by conflicts imposed by supra-regional actors, replacing the rule of power with the rule of law was a matter of urgency.

68. The rule of law could be seen as a three-pronged concept: the rule of international law in inter-State relations; the rule of law at the national level and the rule of law at the United Nations. It was, however, necessary to reach a common understanding of the term before embarking upon any discussion of ways of strengthening the rule of law at each level. To that end, it might be wise to identify some common elements based on general principles of international law such as States' obligation to refrain from the threat or use of force in their international relations, to comply with the principles of universal respect for human rights and fundamental freedoms for all, to respect the equal rights and self-determination of peoples, and the sovereign equality and independence of all States, and not to interfere in the domestic affairs of other States. The principles of the Charter of the United Nations must also form the point of departure for any initiative to reinforce the rule of law at the national and international levels.

69. Buttressing the rule of law in international relations encompassed the sphere of lawmaking and the acceptance of international law. All States must therefore have the chance to participate in standard-setting processes and all States, irrespective of their size, must honour their obligations under international law. The adoption of a policy of compliance only when it was expedient, double standards and arbitrary enforcement undermined the very foundations of the international rule of law.

70. As far as the rule of law at the national level was concerned, it was every nation's sovereign right to decide on the appropriate ways and means of developing an efficient and fair legal system for enhancing the rule of law within its own jurisdiction, taking account of its specific cultural, historical, economic and social needs and conditions. Nevertheless, since States could and should benefit from each other's successful experiences, the United Nations could contribute in that respect by providing, at the request of the State concerned, technical assistance for capacity-building, especially with regard to the incorporation of treaty-based obligations into the internal legal system. The newly established Rule of Law Assistance Unit should help to coordinate the assistance available from various United Nations organs and bodies with a view to preventing duplication of effort; it should not, however, interfere in policymaking, which was the prerogative of the General Assembly.

71. The United Nations should promote the rule of law within the Organization as well. Staff members should have access to an efficient system for the administration of justice, but they must be held accountable for any misconduct. The steps taken to redesign the United Nations system for the administration of justice and to devise a mechanism for ensuring the criminal accountability of United Nations personnel were therefore welcome. On the other hand, the rule of law at the institutional level could be strengthened, only if the principal organs of the United Nations respected each other's mandate and competence, as defined in the Charter. The continuing encroachment of the Security Council on the functions of the other organs and its growing tendency to enter areas of standard-setting and lawmaking which fell within the purview of the General Assembly had prejudiced the Organization's overall functioning. The Security Council was bound by the Charter and it must

therefore exercise its powers in accordance therewith and refrain from intervening in the internal affairs of Member States.

72. As for sub-topics for further discussion, it was essential to identify the common elements, as well as the scope of the concept of the rule of law. At the same time, a balanced approach should be taken to the national and international aspects of rule of law. If the international rule of law was not defended collectively, the United Nations would be consigned to oblivion in the interests of domination and unilateralism and the rule of power would become the norm.

73. **Ms. Borjas Chávez** (El Salvador), noting that the 2005 World Summit Outcome emphasized the importance of the rule of law for peaceful coexistence and cooperation among States, said that there was a close link between the rule of law, peace and security and development. The strengthening of the rule of law was therefore in the interests of the entire international community. The issue should be considered in a comprehensive manner, taking into account the characteristics of the rule of law at both the national and the international levels and the links between the two.

74. At the national level, State action derived legitimacy from the fact that it was subject to the law. The hegemony of the law over the will of rulers and the existence of a predictable legal and institutional order were prerequisites for the observance of due process and the respect of human rights and fundamental freedoms.

75. Judicial independence was fundamental to the rule of law. For that reason, El Salvador had taken action, including the introduction of constitutional reforms, to establish and strengthen legal norms that would ensure an independent, transparent and impartial administration of justice system, and to ensure that administrative institutions complied with those norms.

76. The establishment and maintenance of the rule of law, including transitional justice at the national level, was vital in conflict and post-conflict situations. However, efforts to promote the rule of law should not be limited to those situations, because respect for the rule of law was also a means of preventing conflicts.

77. At the international level, respect for international law and the rule of law were inextricably linked. While States were sovereign entities, they were also interdependent and were therefore willing to become parties to international legal instruments. States should comply with the international legal order by fulfilling their international obligations in good faith and implementing international instruments effectively.

78. The United Nations, as the principal promoter of international law and a provider of technical assistance, in particular to developing countries, played a key role in ensuring the implementation of international legal instruments at the national level. In that regard, her delegation welcomed the establishment of the Rule of Law Coordination and Resource Group and looked forward to the Secretary-General's recommendations with regard to the rule of law at the national and international levels.

79. With regard to the Committee's future work on the agenda item, her delegation supported the idea of selecting one or two sub-topics for discussion each year while avoiding duplication of debates in other forums. The scope of the item should be clearly defined in order to allow for a focused discussion.

80. **Ms. Zabolotskaya** (Russian Federation) said that her country had consistently supported the principle of the rule of law. However, the rule of law could not be achieved without respect for the principles of the sovereign equality of States, non-interference in internal affairs and the settlement of disputes by peaceful means. International law should act as a deterrent to attempts to resolve international problems through the use of force.

81. International law did not allow for double standards and the imposition by some States of their rules of the game on other States. The issue of the rule of law should not be used as a tool for putting pressure on States. The Sixth Committee was the most appropriate forum for discussion of the issue and for the elaboration of decisions acceptable to the entire international community.

82. Many of the Organization's departments, programmes, funds and organs were already involved to a greater or lesser extent in rule of law activities. Her delegation welcomed the Secretary-General's efforts to coordinate those activities, in particular through the establishment of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit. It would be useful if the Group could prepare ideas for improving the effectiveness of rule of

law activities already under way in the United Nations system. Such ideas could form the basis of the report to be submitted by the Secretary-General at the next session, which should pave the way for the identification of priority activities and the preparation of appropriate action by the Secretariat.

83. The Secretary-General's interim report (A/62/261) focused on rule of law activities at the Secretariat level and therefore did not touch on the work of international expert bodies that reported to the General Assembly such as the International Law Commission and UNCITRAL. The next report should therefore include the opinions of such expert bodies and of the International Court of Justice as to how they could help strengthen the principle of the rule of law in the context of the elaboration of a strategy by the General Assembly.

84. Lastly, it was important to decide on priority areas for the Committee's discussions with regard to the rule of law at the next session. One suitable topic might be "The importance of the implementation of international obligations through technical assistance and capacity-building".

85. **Mr. Medrek** (Morocco) said that a strong international legal order based on the rule of law, respect for human rights and the recognition of international law was vital for the achievement of a more just and prosperous world. The 2005 World Summit Outcome had demonstrated the commitment of all Member States to those principles.

86. In an era of globalization where interactions between States were essential for ensuring peace and stability, Member States needed to determine what was meant by the rule of law within the United Nations. Given the diversity and complexity of the issues involved, a pragmatic approach should be taken. No definition could claim to be applicable in all legal traditions, but inspiration could be taken from the Charter of the United Nations, international law and the general principles on which justice, democracy, human rights and the equality of all before the law were founded.

87. Given the variety of rule of law activities being conducted across the United Nations system and the number of actors involved, his delegation warmly welcomed the establishment of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit. The latter should be provided with the support necessary to enable it to carry out its tasks for the long term. His delegation looked forward to receiving a consolidated report on the Organization's various rule of law activities at the sixty-third session.

88. The rule of law needed to be strengthened at both the national and the international levels, since the two complemented each other. It was not sufficient to elaborate new international norms; an effective system for monitoring their application was also needed. Strengthening of the rule of law at the national level was essential not only for peace and security but also for development and economic prosperity. Morocco was currently examining all of its national legislation in order to ensure that it complied with the country's international obligations and supported the democratic process.

89. He reiterated Morocco's support for an international order based on the rule of law and for the efforts of the United Nations system to strengthen the rule of law at the international level. The General Assembly and its Sixth Committee, the International Law Commission and UNCITRAL had a vital role to play in such efforts through their work on the codification and progressive development of international law. Efforts to promote accession to and implementation of international treaties were equally important for the strengthening of the international rule of law. The International Court of Justice played a vital role in ensuring respect for international law and the rule of law. His delegation also supported all efforts to strengthen international criminal justice.

90. The rule of law was a cross-cutting issue relevant to the Organization's activities in almost all areas. For the purposes of a focused discussion, the Committee should select specific sub-topics which enjoyed broad support among members. His delegation, while remaining open to any suggestions in that regard, considered that the sub-topic proposed by Cuba on behalf of the Movement of Non-Aligned Countries could help to define the nature and scope of the rule of law issue.

91. **Mr. Stastoli** (Albania) said that his delegation viewed the rule of law as the cornerstone of efforts to improve the Government's public functions with the involvement of civil society. The rule of law was crucial for the institutionalization of democracy and the establishment of legal certainty, legitimate

expectations and the equality of all before the law, at both the national and the international levels.

92. During the past two years, special emphasis had been placed on strengthening the rule of law in Albania, in line with the Government's European integration agenda. The difficult transition from a dictatorial to a democratic system had been a matter not only of ideology and economy but also of a change of mindset towards the rule of law. Currently, democracy in Albania was understood mainly in terms of reinforcing the rule of law and the institutions which safeguarded it, together with the proper checks and balances. Specifically, legislative and judicial reform was being pursued and a transparent legal system was being developed.

93. Internal and external oversight institutions carried out ongoing work to increase transparency in the court system. A decentralization process was under way and efforts were being made to combat corruption. In addition, measures were being taken to increase the level of professionalism and fairness in the judiciary. The Government had established or reinvigorated institutions such as the Office of the Ombudsman and the Civil Service Commission that aimed to safeguard the rights, freedoms and lawful interests of individuals. Albania considered the rule of law to be a prerequisite for democracy and the overarching objective for full integration with the European Union. In that context, it had established a highly advanced legislative system, together with institutions which would ensure its applicability. However, much work remained to be done in order to make those institutions fully operational.

94. At the international level, there was broad acceptance of the term "rule of law" but little consensus on its meaning and applicability. Sometimes it was used as a political ideal without being substantively defined. His delegation strongly supported the inclusion of the rule of law item in the Committee's agenda, but efforts should be made to ensure that the concept was not rendered meaningless by overuse and ideological manipulation. He reiterated his delegation's support for the establishment of an inventory of current United Nations activities relating to the rule of law.

95. The rule of law was at the core of the Organization's work, as reaffirmed in the 2005 World Summit Outcome and demonstrated by the fact that, in Timor-Leste and Kosovo, the United Nations had had direct responsibility for the administration of justice, including the control of police and prison services. The Organization also supported or substituted for domestic rule of law institutions and had created international criminal tribunals such as the International Tribunal for the Former Yugoslavia. Albania supported the idea of a comprehensive United Nations approach to strengthening the rule of law at the national and international levels.

96. **Mr. Adi** (Syrian Arab Republic) said that infringement by the Security Council of the competencies of the General Assembly was a violation of the rule of law at the international level, as were the use of force and occupation of the sovereign territory of States. There were multiple forms of the rule of law, and attention should be paid to each State's cultural heritage when providing technical and financial assistance. Above all, the rule of law should not be used as a tool for political pressure or interference in a State's internal affairs. Despite progress, the true rule of law had yet to be achieved in international relations, where the will of the strong continued to be imposed on the weak. He welcomed the establishment of the Rule of Law Assistance Unit and stressed that Member States needed to be kept informed of its activities.

97. **Ms. Stipniece** (Latvia) welcomed the establishment of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit, which would help ensure a coherent, efficient approach to rule of law activities across the United Nations system. The Group and the Unit should be provided with adequate resources from the regular budget to ensure their proper functioning. A paragraph to that effect should be included in the resolution on the rule of law to be adopted at the current session.

98. Her delegation was pleased to note that the 2007 annual parliamentary hearing organized jointly by the United Nations and the Inter-Parliamentary Union would focus on the theme "Reinforcing the rule of law in international relations: the key role of parliaments". The choice of that theme demonstrated the high priority placed on the rule of law by Member States.

99. *Ms. Orina (Kenya), Vice-Chairman, took the Chair.*

100. **Archbishop Migliore** (Observer for the Holy See) said that the mutually reinforcing values of peace, development and human rights were both the guiding

principles and the goals of the United Nations. The rule of law created the basis for mechanisms for the promotion of justice and peace and ensured the predictability and security needed for a stable economy and the protection of the dignity of every person, regardless of social, economic or political status. In an increasingly globalized society, where people from different cultures interacted more frequently, migration occurred on a global scale and international trade propelled rapid global development, relations among States must be regulated in order to ensure peaceful coexistence.

101. At the international level, the rule of law guaranteed respect for even the smallest of nations, safeguarding the right of all States to voice legitimate concerns as equals and restraining powerful nations from dominating weaker ones. Those principles were highly relevant to the ongoing reform of the Security Council and the revitalization of the General Assembly.

102. The United Nations played a vital role in the elaboration and implementation of international treaties. By ensuring that the principles of free consent, good faith and *pacta sunt servanda* were respected, the Organization guaranteed that relations between States were governed by reason, justice and fair negotiations rather than by fear, force or manipulation. In enforcing such treaties, the United Nations must be a neutral arbitrator and must respect the contracting intent and desire of the parties. A treaty body system that became opaque and unaccountable to States parties risked undermining the basic tenets of the rule of law and diminished the credibility and legitimacy of the United Nations as a promoter and guarantor of international law.

103. It was the duty of States to ensure that treaties were respected. Selective enforcement and observance of treaties were antithetical to the rule of law. It would be preposterous to claim observance of the rule of law at the national level if international treaties and international law were not observed. Moreover, the implementation of treaties in good faith had benefits that went beyond the rule of law: it was an excellent confidence-building measure, as it promoted trust among parties. That was particularly true in the area of disarmament, where the fear of non-compliance on the part of even one State party paralysed the disarmament and non-proliferation agenda. It was easier to ensure that others complied with their commitments if one complied with one's own.

104. However, there was a growing gap between the development of international law and the capacity of individual States to incorporate it into national legislation and implement it. Technical assistance to those countries was therefore of the utmost importance. In that regard, his delegation welcomed the establishment of the Rule of Law Coordination and Resource Group.

105. Efforts to combat terrorism were necessary but must be conducted on the basis of legal instruments designed to tackle the problem in a rational manner. It was sometimes difficult to apply the rule of law to terrorists who had little or no respect for it. However, States must not take steps that were antithetical to the very principles that gave them legitimacy through the rule of law.

106. Recent years had seen a greater focus on the rule of law at all levels. Although that focus had not always been accompanied by action, some progress had been made, particularly in the area of international criminal justice. Individuals and peoples whose rights had been violated, for example in cases of crimes against humanity, had access to a justice system that served the truth and banished fear, revenge, impunity and inequality before the law.

107. In the 2005 World Summit Outcome, the international community had affirmed its willingness to take timely and decisive action, through the Security Council, to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity when peaceful means proved inadequate and national authorities were manifestly failing to provide such protection. Sovereignty should not be understood as an absolute right and used as a shield against outside involvement. Rather, it should be understood as a responsibility not only to protect citizens but also to promote their welfare. Those principles should be further debated and codified. Through the creation of legal norms, the arbitration of legal disputes and the establishment of safeguards, especially when States failed in their responsibility to protect, the United Nations was called to advance the rule of law in all corners of the globe.

108. **Mr. Loris** (International Development Law Organization (IDLO)) said that IDLO had been established in 1983 and had been given a broad mandate by its current 18 member States to promote the rule of law and good governance in developing

countries, countries in transition and post-conflict countries. It enjoyed longstanding cooperation to that effect with other intergovernmental bodies, particularly in the United Nations system, as well as with a number of United Nations missions and peacebuilding initiatives. It was active in 41 countries through its IDLO alumni associations, which worked to promote the rule of law at the national and regional levels. He urged the United Nations and its Members to include those associations in consultations and initiatives to promote the rule of law at the national and international levels.

109. He announced the launch, following the current meeting, of the new Rule of Law Assistance Directory, available on the IDLO website, which provided the first comprehensive view of ongoing rule of law initiatives throughout the world. He hoped that the report of the Secretary-General on rule of law activities, to be submitted to the General Assembly at its sixty-third session, would take that Directory into account. IDLO for its part would use the report to expand its Directory.

110. He welcomed the establishment of the Rule of Law Assistance Unit, which would give his organization a contact point in the United Nations system, thereby creating synergies. IDLO would support the work of the United Nations to further the progressive development of the rule of law at the national and international levels and would be willing to participate in the Committee's annual focused discussions on related topics. One such topic might be devoted to methods for strengthening United Nations outreach to non-United Nations centres of excellence for the promotion of the rule of law.

Agenda item 108: Measures to eliminate international terrorism (*continued*)

Oral report of the Chairman of the Working Group

111. **Mr. Perera** (Sri Lanka) recalled that, at its first meeting, the Committee had decided to establish a working group with a view to finalizing the draft comprehensive convention on international terrorism and, in accordance with General Assembly resolution 54/110, to continue considering the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. The Working Group was open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency. It had held three meetings, at which it had had before it the reports of the Ad Hoc Committee on its sixth and eleventh sessions (A/57/37 and A/62/37), as well as the report of the Chairman of the Working Group during the sixty-first session of the General Assembly, reflected in the summary records of the Sixth Committee (A/C.6/61/SR.21). It had also had before it two letters from the Permanent Representative of Egypt, one addressed to the Secretary-General (A/60/329) and the other to the Chairman of the Sixth Committee (A/C.6/60/2).

112. At its first meeting, on 11 October 2007, the Working Group had decided to proceed with its discussion on outstanding issues relating to the draft comprehensive convention and then go on to consider the question of convening a high-level conference. At its second meeting, on 15 October 2007, the Working Group had received a report from the Coordinator on the results of the intersessional bilateral contacts regarding the draft comprehensive convention. On 16 and 17 October 2007, he, as Chairman, together with the Coordinator of the draft comprehensive convention, Ms. Telalian, had had bilateral contacts with interested delegations on the outstanding issues. At its third meeting, on 18 October 2007, the Working Group had received a report on the results of the bilateral contacts, followed by an exchange of views among delegations and a discussion on the question of convening a high-level conference.

113. The purpose of the intersessional bilateral contacts had been to gain further insights into the views of delegations on the elements of the non-paper on the draft comprehensive convention that had been presented during the eleventh session of the Ad Hoc Committee and to ascertain whether those elements could form the basis of an overall package which would help to move the process forward. During the discussions, which had focused mainly on draft article 18, some members had been concerned that the use of ambiguous language would leave the implementation of the draft convention open to abuse.

114. In her briefing on the intersessional contacts, on 15 October 2007, the Coordinator had explained that an effort had been made to bridge the different views held by delegations and had stressed that the draft convention had been designed to serve as a law

enforcement instrument that would operate in the context of other existing legal regimes.

115. In her statement on 18 October 2007, she had noted that the purpose of the informal bilateral contacts had been to clarify how the elements of the non-paper sought to be contextualized in the scheme under the draft convention, in the light of views expressed, during both the Committee's debate on measures to eliminate international terrorism and the bilateral contacts. The concerns expressed had included the importance of safeguarding the right of peoples to self-determination, the need to take into account "State terrorism", the satisfactory resolution of matters concerning potential impunity of military forces of a State and the need to distinguish clearly between activities falling within the scope of the draft convention and those governed by international humanitarian law.

116. She had explained that, in the overall scheme of the draft comprehensive convention, all those aspects were addressed in draft article 18, whose constituent elements had to be read as a whole: it would be incomplete if it was not related to the other articles of the draft convention, in particular draft article 2, which provided, for the purpose of the draft convention, the criminal law definition of acts of terrorism. Draft article 18, read in conjunction with draft article 2, had merely excluded from the scope of the convention certain activities that were regulated by other fields of law, it being understood that the draft instrument would have to operate in the context of an overall international legal framework where other rules of international law were also applicable. An attempt had been made in draft article 18 to safeguard, as far as possible, the application of such other law, by not rendering unlawful otherwise lawful acts under such law. At the same time it had sought to close any loopholes that might open possibilities for impunity for certain categories of persons.

117. The Coordinator had noted that paragraph 1 of draft article 18, which stated that nothing in the convention should affect other rights, obligations and responsibilities of States, peoples and individuals under international law, in particular the purposes and principles of the Charter and international humanitarian law, was not contentious. It served to determine what was excluded from the scope of the draft convention, including exercise of the right of peoples to self-determination.

118. The definition of acts of terrorism in draft article 2 included acts undertaken by "any person". By excluding certain activities of armed forces in paragraph 2 of draft article 18, it reflected the clear understanding that such activities were governed by other rules of international law. It had nevertheless been found useful also to address the question of "military forces of a State", that was to say activities of "armed forces of a State" in peacetime and other persons covered by the definition of "military forces of a State" in article 1 of the draft convention. Moreover, under paragraph 3 of draft article 18, activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they were governed by other rules of international law, were not governed by the draft convention. It had been pointed out that in practically all jurisdictions military forces of a State were subject to a code of conduct separate from civilians and that that the phrase "inasmuch as they are governed by other rules of international law" embraced conduct that might be both lawful and unlawful under international law. Read in conjunction with paragraph 4, that provision did not make lawful otherwise unlawful acts, but simply recognized that other laws would apply and did not preclude prosecution under such laws. The addition proposed to paragraph 4, in the text submitted during the 2007 session of the Ad Hoc Committee, namely the reference to the fact that "acts which would amount to an offence as defined in article 2 of this Convention remain punishable under such laws", together with the new preambular language based on the Convention for the Suppression of Acts of Nuclear Terrorism, sought to buttress the fact that there was an inner core of conduct which, if committed, would constitute a punishable offence, irrespective of the regime that would apply.

119. The Coordinator had further stressed that paragraph 2 of draft article 18 already established a demarcation between what was covered by the draft convention and activities of armed forces during armed conflict, "as those terms are understood under international humanitarian law". However, in order to provide further clarity a new paragraph 5, framed as a "without prejudice clause", had been added during the 2007 session of the Ad Hoc Committee. That paragraph consisted of a general "without prejudice" statement which had subsequently been elucidated with regard to rules of international law applicable for certain acts that would be lawful under international humanitarian

law. It had been clarified that the term "lawful" in that context should, from an international humanitarian law perspective, properly be understood with its double negative connotation as "not unlawful acts", since international humanitarian law did not in a literal sense define which acts were "lawful", but defined which acts were prohibited. However, in view of the need to distinguish those acts that were "unlawful" under paragraph 1 of draft article 2, the term "lawful" in paragraph 5 had been used as being more appropriate in the circumstances. That paragraph, together with draft article 18 as a whole, had been drafted in such a way as to provide the necessary direction to those that would be responsible for the implementation of the draft convention. It would be for the parties and consequently the judicial authorities to make interpretations in the light of the circumstances in specific cases. The key consideration was that international humanitarian law should not be prejudiced by the draft convention.

120. Some delegations had expressed support for the proposal made by the Coordinator during the eleventh session of the Ad Hoc Committee (A/62/37, annex B, para. 14), which they had considered to constitute a good basis for reaching a compromise solution on the text. It had been noted that the elements, together with the explanations provided by the Coordinator, offered a satisfactory clarification that the draft comprehensive convention did not interfere with the regime of international humanitarian law. The point had also been made that that clarification provided by the Coordinator offered a breakthrough in the deliberations and should be part of the *travaux préparatoires* of the draft convention.

121. Some other delegations had expressed doubt whether the proposal sufficiently addressed their concerns, in particular the need to distinguish clearly between activities falling within the scope of the draft convention and those governed by international humanitarian law. It had also been pointed out that the proposal still contained ambiguous language that might leave the implementation of the draft convention open to uncertainties. It had been acknowledged that there was need to study the proposal further, in the light of the clarifications provided by the Coordinator during the briefing, together with the proposal. Notwithstanding the difficulties, delegations had remained committed to the ongoing process and had supported the efforts for the early conclusion of the draft comprehensive convention. Several delegations had noted that the format of informal bilateral contacts constituted a constructive and satisfactory mechanism for advancing the process.

122. At its third meeting, on 18 October 2007, the Working Group had considered the question of the convening of a high-level conference, in accordance with General Assembly resolution 61/40, following the proposal to convene a special session of the General Assembly to examine and adopt an action plan for cooperation against terrorism.

123. The representative of Egypt had recalled that, although many international and regional conventions aiming to fight terrorism had been adopted, the number of terrorist acts had continued to increase, particularly in the most recent past; moreover, the comprehensive convention had not been yet finalized. Accordingly, it had been felt to be still necessary to strengthen international cooperation in order to combat terrorism in all its aspects, and not only from the security angle. The view had been expressed that the political, legal, social and economic aspects of the issue needed to be linked and that, in discussions within the United Nations system, the required balance had been lacking.

124. The representative of Egypt had stressed the key importance of sending a clear and strong message from the international community, which could take the form of an action plan and a declaration to be adopted during the proposed high-level conference. The sponsor delegation had noted that it was timely and relevant to convene such a high-level conference on the subject.

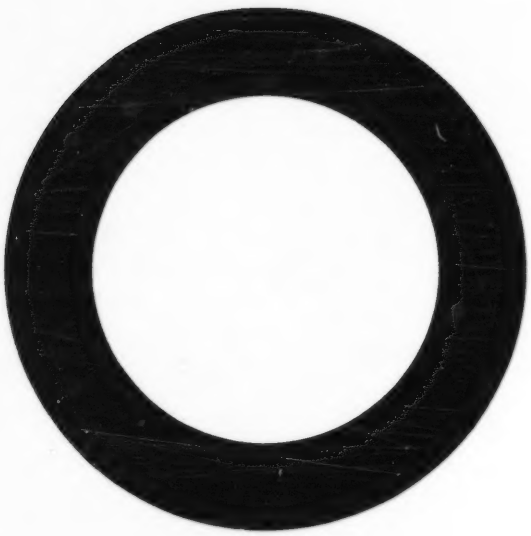
125. Some delegations had expressed their support for Egypt's proposal, observing that such a conference would offer an opportunity to look at the issue from a global perspective, as well as to define terrorism. It had been noted in that connection that terrorism could only be effectively combated on the basis of a holistic approach. Some delegations had emphasized that the convening of the conference should not be linked with, or deferred until, the adoption of the comprehensive convention but would, on the contrary, be a good opportunity to resolve outstanding issues.

126. Some other delegations, while not opposed in principle to the proposal, had maintained that such a conference should take place after the adoption of the comprehensive convention and that efforts should continue to focus on its negotiation. It had also been

pointed out that, following the adoption of the United Nations Global Counter-Terrorism Strategy, more time and resources needed to be devoted to its implementation rather than to the convening of another conference.

127. He expressed his confidence that the text proposed by the Coordinator at the last session of the Ad Hoc Committee, together with the very useful additional clarifications presented during the Working Group, contained the potential to facilitate agreement on the elements of an overall package and called on delegates to demonstrate the necessary political will to that end.

The meeting rose at 12.45 p.m.



A/C.6/62/SR.17

Readex
Fiche

United Nations A/C.6/62/SR.17

General Assembly
Sixty-second session
Official Records

Distr.: General
28 November 2007

Original: English

Sixth Committee

Summary record of the 17th meeting
Held at Headquarters, New York, on Friday, 26 October 2007, at 3 p.m.

Chairman: Mr. Tulbure ..... (Moldova)

Contents

Agenda item 80: Criminal accountability of United Nations officials and experts on mission (*continued*)

Agenda item 137: Administration of justice at the United Nations (*continued*)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

07-56553 (E)

The meeting was called to order at 3.10 p.m.

Agenda item 80: Criminal accountability of United Nations officials and experts on mission (*continued*) (A/62/54, A/62/329 and A/60/980)

Oral report by the Chairman of the Working Group

1. **Ms. Telalian** (Greece) recalled that at its first meeting, on 8 October 2007, at the recommendation of the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission, the Sixth Committee had decided to establish a working group to continue consideration of the report of the Group of Legal Experts established by the Secretary-General pursuant to resolution 59/300, taking into account the views expressed in the Ad Hoc Committee. The Committee had decided to open the Working Group to all States Members of the United Nations and members of the specialized agencies or the International Atomic Energy Agency.

2. The Working Group had decided that the members of the Bureau of the Ad Hoc Committee would continue to act as Friends of the Chair. In view of the unavailability of Martin Roger (Estonia) to serve in that capacity and in order to ensure the representation of all regional groups, it had been decided to invite Ms. Minna-Liina Lind (Estonia) to join the other Friends of the Chair, Mr. El Hadj Lamine (Algeria), Mr. Ruddy Flores Monterrey (Bolivia) and Mr. Ganeson Sivagurunathan (Malaysia). The Working Group had paid tribute to Mr. Roger for his valuable contribution as Rapporteur of the Ad Hoc Committee.

3. The Working Group had had before it the report of the Ad Hoc Committee (A/62/54), the report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations (A/60/980) and the note by the Secretariat on the criminal accountability of United Nations officials and experts on mission (A/62/329).

4. The Working Group had held four meetings, on 15 to 17 and 23 October 2007. At its first meeting, it had adopted its work programme and organized its work by addressing the clusters of issues considered in the report of the Group of Legal Experts, together with the note by the Secretariat, namely, (a) the scope *ratione personae*; (b) the crimes; (c) the bases for jurisdiction; (d) investigations; (e) cooperation among States and between States and the United Nations; (f) the form of instrument; and (g) the way forward. Part of the time had been devoted to informal consultations on a draft resolution.

5. Several delegations had alluded to their statements made during the plenary debate on the criminal accountability of United Nations officials and experts on mission (A/C.6/62/SR.6 and SR.7), reiterating the importance of the agenda item. Some had stressed the importance of avoiding duplication of effort and the need to take into account the work of the Special Committee on Peacekeeping Operations and the Ad Hoc Open-ended Working Group on Assistance and Support to Victims of Sexual Exploitation and Abuse. Certain delegations had expressed reservations regarding the adoption of definitions and terminology that had been used elsewhere, especially in instruments to which their Governments were not parties. Others had welcomed the approaches proposed in the note by the Secretariat, in particular the distinction between short- and long-term measures, suggesting that the former should be the focus of the Working Group at the current session while the latter should be the subject of future consideration in the context of the Ad Hoc Committee.

6. With regard to the scope of application *ratione personae*, some delegations had requested data on the types of personnel involved or alleged to be involved, whether military or civilian personnel; the crimes committed or alleged to have been committed and their seriousness; the extent to which investigations were conducted and information on follow-up, if any; whether offences had been committed in the course of official duties or while off-duty; and whether such crimes were committed in the mission area, at headquarters or in third States. Other delegations had not viewed statistics as of vital importance, preferring to focus on the incidents' impact on the victims and on the image and credibility of the United Nations, while still others had considered that statistical data would reveal the scope of the problem and assist in the formulation of short- and long-term measures.

7. Some delegations had sought to limit the Working Group's mandate to issues of criminal accountability arising in the context of peacekeeping operations, stating that the term "United Nations operation" was vague and needed to be clarified or that any reference to "operation" should be deleted. Other delegations had favoured a broader approach that would include operations conducted under Chapters VI and VII of the

Charter of the United Nations and all personnel involved therein, irrespective of their contractual status. Some delegations had been prepared to consider extending the scope to include personnel of United Nations funds and programmes; others had proposed to include not only personnel involved in a United Nations operation in a host State but also those who committed a crime in a third State while involved with a United Nations operation; and still others had maintained that the important consideration was to ensure that no one working for the United Nations should fall into a jurisdictional gap. It had been considered that the scope of application should be clearly defined in any negotiation of a legally binding instrument.

8. Some delegations had maintained that military and civilian police personnel working for the United Nations, even those classified as experts on mission, should be excluded from the scope of application *ratione personae* since, like members of national contingents, they were subject to the exclusive jurisdiction of the troop-contributing State. Other delegations, recognizing that the inclusion of military observers and civilian police was a delicate matter, had stressed the need for caution; international cooperation in matters of extradition and mutual assistance in judicial matters might be relevant to situations involving military personnel, including members of national contingents, who should not therefore be excluded a priori. A regime of cooperation that would provide for mutual assistance in respect of crimes committed by such personnel could be envisaged along with other issues to be addressed in a legally binding instrument.

9. At some delegations' request, the Secretariat had provided additional statistics on alleged misconduct by United Nations officials and experts on mission. In addition to the two sources of information already before the Working Group, namely the summary of statistics in paragraph 7 of the annex to the report of the Ad Hoc Committee (A/62/54) and the statistics cited in paragraph 8 of the note by the Secretariat (A/62/329), the Secretariat had circulated a copy of the annexes to the report of the Secretary-General on special measures for protection from sexual exploitation and sexual abuse (A/61/957), which contained statistics on certain types of allegations for 2006, and three informal tables containing further information on misconduct for 2006 and 2007. A general distinction had been drawn between statistics on allegations of sexual exploitation and abuse and those concerning other types of misconduct.

10. The six annexes to the report of the Secretary-General dealt with cases of sexual exploitation and abuse (SEA) in 2006. They contained details on United Nations entities requested to provide information on allegations (annex I); the number (14) and nature of allegations by United Nations entities other than the Department of Peacekeeping Operations (annex II); and the status of investigations into allegations reported in 2006 and involving personnel of United Nations entities other than the Department of Peacekeeping Operations (annex III); those statistics were based on information provided by the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the United Nations Volunteers and the World Food Programme (WFP). Annexes IV to VI provided information on allegations emanating from missions led by the Department of Peacekeeping Operations in 2006 (357; annex IV); the status of investigations into allegations reported in 2006 (annex V); and the nature of the allegations made by Department personnel (annex VI). Tables 1 and 2 provided a breakdown of allegations of non-SEA misconduct for 2006 (438) and for the period 1 January to 30 September 2007 (416), respectively, and table 3 provided further SEA statistics for the same period.

11. The need to distinguish between allegations of misconduct and completed investigations had been noted. Accordingly, while some of the annexes to the report of the Secretary-General (A/61/957) provided a breakdown of allegations received, annexes V and VI provided information from the perspective of completed investigations; of the allegations received in 2006, 82 investigations had been completed. No statistics concerning completed investigations of non-SEA allegations were available.

12. Annexes V and VI provided a breakdown of completed investigations involving allegations of SEA misconduct by civilians, United Nations police and military personnel, without distinguishing between military observers and members of military contingents. However, it had subsequently been clarified that 12 of the 357 allegations of SEA misconduct received in 2006 in the context of missions led by the Department of Peacekeeping Operations had

been made against military observers. Of those, two investigations had been completed and one allegation had been found to be substantiated. Table 3 indicated that of the 99 allegations reported in the context of peacekeeping operations from 1 January to 30 September 2007, 26 concerned civilian personnel (including United Nations staff, United Nations Volunteers, contractors and consultants), 45 concerned military personnel who were part of national contingents (excluding military observers), none concerned military observers, 20 concerned the police component and 10 were classified as "unknown".

13. With respect to non-SEA misconduct, table 1 showed that of the 438 allegations reported in the context of United Nations peacekeeping operations from 1 January to 31 December 2006, 240 concerned civilian personnel (including United Nations staff, United Nations Volunteers, contractors and consultants), 135 related to military personnel who were part of national contingents (excluding military observers), 8 concerned military observers and 55 concerned the police component. Table 2 showed that of the 416 allegations reported in the context of United Nations peacekeeping operations from 1 January to 30 September 2007, 291 concerned civilian personnel (including United Nations staff, United Nations Volunteers, contractors and consultants), 145 related to military personnel who were part of national contingents (excluding military observers), 18 concerned military observers, 42 concerned the police component and 10 were classified as "unknown".

14. With regard to the types of conduct alleged, annexes II and VI listed allegations of SEA misconduct such as sex with minors, exploitative sexual relationships, sex with prostitutes and rape. Tables 1 and 2 listed non-SEA allegations, including abuse of authority, assault, complex fraud, conflict of interest, fraud, harassment, infractions of United Nations rules and regulations, misuse or mismanagement of United Nations resources, negligence, theft and traffic-related misconduct. It had been noted that the Secretariat recorded statistics on allegations of "misconduct", not "crimes" per se. For example, tables 1 and 2 included infractions of United Nations rules and regulations which did not necessarily constitute criminal conduct. Nonetheless, it had been recalled that the Secretariat, in paragraph 8 of its note, stated that "while not all cases of misconduct constitute criminal activity, statistics in this area suggest that the problem is significant". The Working Group had been informed that although the Organization recorded whether the alleged misconduct was said to have been committed in or outside the host country, the vast majority of allegations emanated from within the area of the United Nations operation in question.

15. In reply to a question, a representative of the Office of Legal Affairs had explained that the term "United Nations operation" referred to operations defined by the competent organ of the United Nations and conducted under United Nations authority and control for the purpose of maintaining and restoring international peace and security.

16. Some delegations had stressed that the scope *ratione materiae* was closely linked to the scope *ratione personae*. Several delegations had favoured a generic approach rather than a listing of offences for the purpose of defining crimes *ratione materiae*. Such an approach, which would avoid the need for frequent updates to the list, could be based on the severity of punishment and the requirement of dual criminality. It had been pointed out, however, that a generic description based on severity of punishment alone would not be sufficient, especially in situations where the misconduct did not constitute a crime under the law of a particular jurisdiction. It had also been suggested that crimes could be defined using a combination of the generic approach and an indicative list; attention had been drawn to the vagueness of the term "serious crime".

17. While acknowledging that the subject matter had gained notoriety because of allegations of sexual exploitation and abuse, some delegations had seen no reason to limit the scope *ratione materiae* to assaults on the physical integrity of a person; they had suggested the inclusion of property crimes, embezzlement, trafficking, bribery and corruption, while drawing attention to the need to avoid duplication of efforts since the United Nations Office on Drugs and Crime also dealt with cases involving the corruption of United Nations officials.

18. In response to a request for clarification of the term "serious criminal activity", the Secretariat had noted that in its report on strengthening the investigation functions in the United Nations (A/58/708), the Office of Internal Oversight Services classified as Category 1 high-risk, complex matters and serious crimes such as serious or complex fraud; abuse

of authority; conflict of interest; gross mismanagement; waste of substantial resources; all cases involving risk of loss of life to staff or others; substantial violation of United Nations regulations, rules or administrative issuances; and any other serious criminal act or activity. Matters involving sexual exploitation and abuse had subsequently been given the status of Category 1 cases. Examples of recent examples of an "other serious criminal act or activity" included stabbings, abduction, arson and trafficking in drugs, weapons, gold, diamonds or human beings. It had been noted that the Organization's definition of a "serious criminal act or activity" might differ from those used by States.

19. Some delegations had considered that to the extent possible, priority should be given to the jurisdiction of the host State in deference to the principle of territoriality. It had been noted that the host State's exercise of jurisdiction would have advantages in terms of the availability of evidence and witnesses, while giving the victims a sense that justice had not only been done, but had been seen to be done; it should not be assumed too easily that the host State would be unable properly to exercise its criminal jurisdiction. According to another view, bearing in mind the need to ensure adequate protection to individuals entrusted with international functions, priority should be given to the jurisdiction of the State of nationality of the alleged offender (or the State of permanent residence, if the alleged offender was a Stateless person), since the host State in such circumstances was frequently unable to exercise its jurisdiction effectively.

20. Concerning the relationship between the basis for jurisdiction and the *aut dedere aut judicare* (extradite or prosecute) principle, the view had been expressed that the appropriateness of establishing a regime based on that principle required further study. It had been noted that the questions concerning conflicting jurisdictions would need to be addressed if a decision was taken to elaborate a binding instrument. Some delegations had mentioned the link between jurisdictional issues and the question of an immunity waiver, noting in particular that articles 22 and 23 of the 1946 Convention on the Privileges and Immunities of the United Nations set out the general criteria governing the waiver of immunities for officials and experts on mission; they had also stressed the obligation to respect local laws and regulations. According to another view, practice relating to the waiver of immunities should be clarified and made more uniform; it had been suggested that in accordance with Article 105, paragraph 3, of the Charter of the United Nations, guidelines might be drafted by the Sixth Committee or the International Law Commission. Some delegations had urged that the existing regime on immunities should not be altered.

21. In response to questions regarding waivers of immunity by the Secretary-General, attention had been drawn to the explanation provided by the Office of Legal Affairs and reflected in paragraphs 12 to 16 of the annex to the Report of the Ad Hoc Committee (A/62/54).

22. Some delegations had stressed the need to strengthen the host State's capacity to conduct criminal investigations. It had also been suggested that the victim should be informed, at least in general terms, of measures adopted or follow-up action taken as a result of an allegation. The need to update the relevant Office of Internal Oversight Services investigative manuals and protocols had been mentioned, and further information on ongoing measures aimed at enhancing the Office's investigative capacity had been requested. The Secretariat had replied that in response to a request by the General Assembly addressed to the Secretary-General, proposals for strengthening the Office, based on internal assessments and on a review conducted in 2007 by an external expert, would be submitted to the Assembly at its sixty-second session. During the period 30 June 2006 to 1 July 2007, the Office had taken steps to improve its operations, including by updating and expanding its investigation guidelines and standard operating procedures and establishing a jurisprudence library, a legislation library and a procedures and reference library.

23. Attention had been drawn to paragraph 8 of the annex to the Report of the Ad Hoc Committee, which described the practical constraints on the collection of data and subsequent production of statistics. It had been reported that the Department of Field Support, in cooperation with the Communications and Information Technology Section, had finalized the development of a comprehensive misconduct tracking system. The new system, which had recording, tracking and reporting features, would be accessible to conduct and discipline personnel as well as to the Office.

24. Cooperation was needed at all levels: between States; between States and the United Nations; and between the relevant departments, funds and programmes. It had been proposed that consideration should be given to drafting a model bilateral convention on extradition or model clauses to be incorporated into existing extradition treaties. It had also been observed that the exercise of criminal jurisdiction by the State of nationality of the alleged offender would require cooperation between that State and the host State during the investigation; perhaps mechanisms for States to report to the United Nations might be developed. There was a need for enhanced technical cooperation between States and the Organization, notably in developing the host State's capacity and providing adequate training to individuals deployed under the United Nations flag. Consideration of the form of a possible legal instrument had been deferred.

25. In their discussions about the way forward, delegations had expressed a general desire to focus on preparation of a draft resolution, bearing in mind the recommendations contained in the note by the Secretariat. Some delegations had been of the view that, for the time being, the focus should be on short-term measures; others, however, had stressed their interest in the elaboration of a binding instrument. It had been suggested that, as an alternative to a convention, the model status-of-forces agreement, the status-of-mission agreement, the memorandum of understanding and, as appropriate, the host agreement, might be amended in order to address matters concerning the criminal accountability of United Nations officials and experts on mission. On the other hand, it had been noted that the existing instruments addressed a different category of personnel and that the statistics revealing the nature of the problem would have implications for the form of the instrument to be adopted.

26. Several delegations had expressed support for some of the short-term measures mentioned in the note by the Secretariat, in particular the adoption of a General Assembly resolution strongly urging States to establish, at a minimum, jurisdiction over their nationals engaged in a United Nations operation who committed serious crimes as they were known and defined in their existing domestic criminal laws, where that conduct also constituted a crime under the laws of the host State. It had been stressed that the wording of such a resolution should be carefully considered and that its scope should be clearly limited to conduct committed by United Nations officials or experts on mission in the context of a United Nations operation. A preference had also been expressed for a resolution containing more general language than that proposed by the Secretariat. It had been pointed out that terms such as "serious crime" or "United Nations operation" would need to be clarified since they did not offer sufficient guidance for States; moreover, given that some of the short-term measures recommended had a bearing on the activities of other bodies, it would be necessary to avoid overlapping.

27. There had been general agreement to focus first on short-term measures to address the problem of criminal accountability. Accordingly, as Chairman of the Working Group, she had prepared a draft resolution on the basis of comments made by delegations and of the recommendations contained in the note by the Secretariat. Work on the draft resolution was proceeding in the context of informal consultations.

Agenda item 137: Administration of justice at the United Nations (*continued*) (A/RES/61/261; A/62/294)

Oral report by the Chairman of the Working Group

28. **Mr. Sivagurunathan** (Malaysia) recalled that the General Assembly, in its resolution 61/261, paragraph 35, had invited the Sixth Committee "to consider the legal aspects of the reports to be submitted by the Secretary-General without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters". In accordance with paragraph 36 of the resolution, the General Assembly also had decided to continue consideration of the item during the current session "as a matter of priority with the objective of implementing the new system of administration of justice no later than January 2009".

29. The Working Group had met 11 times from 8 to 19 and on 25 October 2007. At the first meeting the representatives of the Office of Legal Affairs and the Department of Management had introduced the report of the Secretary-General on the administration of justice at the United Nations (A/62/294) and had answered questions raised by delegations. The Chairman of the Advisory Committee on Administrative and Budgetary Questions (ACABQ) had attended the fifth meeting and had briefed

delegations about ongoing negotiations in ACABQ on the financial aspects of the proposed new system of administration of justice. Representatives of the Office of Legal Affairs, Department of Management and Office of Human Resources Management, together with the Secretary of the United Nations Administrative Tribunal, had attended the sixth meeting of the Working Group and had responded to queries from delegations.

30. As Chairman of the Working Group, he had prepared a list of issues as a basis for discussions. Delegations had addressed relevant paragraphs of the report, as well as the elements of draft statutes in annexes III and IV to the Secretary-General's report. Delegations had had the opportunity to make comments on each issue two or three times.

31. With regard to the scope *ratione personae* of the new system of administration of justice, some delegations had supported the Secretary-General's proposal that all personnel working for the United Nations should have recourse to the new system. The view had also been expressed that officials appointed by the General Assembly and experts on mission should have access to the system. Some delegations felt that the system should not cover individuals who were not staff of the United Nations and the funds and programmes, such as contractors, consultants, daily paid workers and experts on mission, whose claims would be distinct from claims brought by United Nations employees because the nature of their employment relationship was different. Further information would be necessary with regard to the type of grievances, applicable law and type of remedies currently available to such workers. Those delegations had further suggested that consideration should be given to alternative modes of dispute settlement which might be more appropriate or effective for those individuals, such as small claims commissions and expedited procedures. In that regard, paragraph 52 of the model status of forces agreement for peacekeeping operations (A/45/594) provided a mechanism for claims by locally recruited personnel. Some delegations had expressed the wish to have more information on that practice and wondered whether it was viewed by all concerned as fair and effective.

32. With regard to legal assistance for staff, some delegations had supported the Secretary-General's proposal. In their view, enhanced legal assistance provided by legally qualified full-time professionals would help to place staff and management on equal footing in the formal justice system. Some had referred to paragraph 23 of General Assembly resolution 61/261, in which the Assembly agreed that legal assistance for staff should continue to be provided and supported the strengthening of a professional office of staff legal assistance.

33. Assistance to staff could be provided either through an internal legal assistance system or by hiring lawyers from outside the United Nations. Some delegations had expressed the opinion that the proposed office of staff legal assistance would be beneficial to the United Nations and the staff. By providing timely advice to staff in cases not ripe for litigation, unnecessary proceedings could be prevented. Some other delegations had expressed the view that the United Nations did not have an obligation to employ lawyers to provide staff with legal assistance and representation and felt that the United Nations should not exceed what other international organizations or national jurisdictions provided.

34. It had been suggested that staff members seeking more individualized advice should continue to rely on the current voluntary system of legal assistance, which should be improved. The new office of legal assistance should absorb the functions of the Panel of Counsel, which should continue to provide training and coordination for volunteers. The Secretariat should develop better incentives for managers and staff to promote voluntary services. However, staff who wished to be represented by an attorney could hire a private attorney or seek assistance from United Nations associations. Reliance on independent outside representation would also avoid conflict of interests. The proposed office of staff legal assistance could maintain registries for private lawyers and United Nations staff volunteers interested in serving as a staff counsel. Staff associations could also provide staff with legal representation.

35. Divergent views had also been expressed as to whether legal assistance should comprise only legal advice or should also include representation in litigations, legal research and preparation of briefs. Some delegations had suggested that a distinction should be made between legal advice, which should be free of charge, and legal representation, for which staff members could contribute as appropriate. The view had also been expressed that if in a dispute a defendant

prevailed, the United Nations would have the burden of compensating the defendant for the expenses incurred.

36. Support had been expressed for the preparation of a code of conduct to guarantee the impartiality and independence of professionals working for the proposed office of staff legal assistance. Delegations generally supported the strengthening of the informal system of justice, which could result in reducing the accumulation of cases before the formal system. It had been suggested that the relationship between the informal and formal systems needed to be clarified, by inclusion of a provision in the statute of the United Nations dispute tribunal to regulate referral of cases by the Tribunal to mediation. Concerning terminology, the view had been expressed that the terms "extrajudicial" and "judicial" should be used instead of "informal" and "formal" system of justice. The term "quasi-judicial" had also been proposed.

37. With regard to the Ombudsman, some delegations had supported the appointment of the Ombudsman by the Secretary-General, noting that that process had already begun. The view had also been expressed that the appointment of the Ombudsman by the Secretary-General, who was a party to disputes, might raise questions about the independence and impartiality of the Ombudsman and that, in order to avoid real or perceived conflicts of interests, the Ombudsman should be appointed by the General Assembly. Concerning the possible role of the General Assembly, some delegations favoured the endorsement of the Ombudsman by the General Assembly after selection by a panel of experts. Others supported direct appointment of the Ombudsman by the General Assembly.

38. The view had also been expressed that the Ombudsman should be a person who enjoyed the trust of both staff and management. Under that view, the appointment of the Ombudsman by the General Assembly would not necessarily increase the trust of the parties involved. The procedure for the appointment of the Ombudsman proposed by the Redesign Panel was the best approach to gain the trust of both the employer and the employees.

39. Some delegations had expressed the opinion that the Ombudsman should have legal background, particularly in the area of labour law, as well as vast experience in mediation and negotiation procedures. Other delegations had not considered legal training essential but had stressed the importance of experience in mediation and negotiation.

40. Delegations had supported the creation of a mediation division in the Office of the Ombudsman. Some had stressed that decentralization of the system, including mediation, was an essential feature. Other delegations, while supporting the strengthening of the informal system, had expressed grave reservations concerning equal access of non-staff to the system.

41. Concerning the possible referral of cases by the proposed United Nations dispute tribunal to mediation, some delegations had taken the view that mediation was entirely voluntary and any referral by the tribunal would be contrary to such basic requirement. The tribunal could, however, encourage parties to settle their disputes by resorting to mediation. Other delegations had favoured authorizing the tribunal to refer disputes to mediation under certain conditions: willingness of the parties to a dispute; fixing a time limit for the resolution of disputes through mediation; and avoidance of referral if the dispute had previously been submitted to mediation.

42. Concerning qualifications of mediators, some delegations felt that legal training in labour law should be required, while others had expressed the view that mediators need not necessarily be lawyers but should have training in alternative dispute resolution mechanisms, including mediation.

43. Many delegations had agreed in principle with the Secretary-General's proposal regarding the qualifications of judges of the proposed United Nations dispute tribunal and United Nations appeals tribunal, with the proviso that gender and regional balance should be also respected in their nomination and selection. Some delegations had expressed the view that judicial experience was a paramount consideration with regard to qualifications. Therefore, the notion of equivalent experience in the Secretary-General's proposal entailed a risk of lowering the bar for qualifications. The view had also been expressed that the criteria regarding qualifications should be stated in flexible terms, and, as with other international tribunals, previous judicial experience should not be an absolute requirement. It had also been observed that the requirement of previous judicial experience was more important for dispute tribunal judges. Some delegations had expressed the view that a decision on the qualifications of judges would also depend on

whether cases before the dispute tribunal would be decided by a single judge or by a panel of three judges.

44. The Working Group had agreed that dispute tribunal and appeals tribunal judges should be elected by the General Assembly and that the election of judges should be staggered so as to ensure a partial periodic renewal of the composition of each tribunal. Several delegations had expressed the view that dispute tribunal judges' independence would be undermined if they were appointed by the Secretary-General as proposed in the Secretary-General's report.

45. As proposed by the Secretary-General in his report, delegations had agreed that judges should be removable only by the General Assembly, and exclusively on grounds of proven misconduct or incapacity. However, some delegations had questioned why only the Secretary-General could make a recommendation to that effect to the General Assembly. It had been proposed that the "grounds of proven misconduct or incapacity" should be carefully defined and that decisions on removal be subject to the qualified majority prescribed by rule 83 of the rules of procedure of the General Assembly.

46. The Working Group had agreed that in order to ensure that candidates met the required qualifications, it was essential that a mechanism should be identified for the compilation of lists of persons eligible for appointment to dispute tribunal and appeals tribunal judicial positions. Several delegations therefore supported the establishment of an internal justice council for the selection of judges. Some delegations, however, had raised doubts as to the composition of the council proposed by the Secretary-General, which in their view gave too much representation to the administration. In that regard, it had been suggested that the chairperson of the proposed council should be designated by agreement of the other members of the council, not appointed by the Secretary-General. A suggestion had been made that Member States should be represented on the proposed internal justice council. It had also been suggested that the council should present to the General Assembly a list of qualified candidates containing two or three times the number of candidates to be elected. As an alternative to an internal justice council, it had been proposed that nominations of candidates for the tribunals should be made directly to the General Assembly by Member States.

47. Regarding the terms of office of judges, the Secretary-General had proposed a five-year term, renewable only once, for both tribunals. In that respect, several delegations had expressed the view that a possibility of re-election or reappointment would threaten the independence of judges. A clear preference had emerged for a non-renewable term in order to avoid any real or perceived conflict of interest.

48. Despite extensive debate, no agreement had been reached on the issue of the number of judges who should decide a case in the first instance. In his report, the Secretary-General had proposed that a single judge would decide on procedural matters, while decisions on substance would require review by a panel of three judges. While some delegations favoured first-instance decisions being made by a single judge, other delegations preferred a panel of three judges so as to duly reflect diversity of nationalities, cultures and legal traditions in the decision-making process. It had also been observed that issues of substance and procedure could not always be clearly separated. Furthermore, the point had been made that any determination of the number of first-instance judges should take into consideration certain factors, such as the nature and level of legal assistance provided to dispute tribunal judges, as well as the question whether the appeals tribunal, as an appellate body, would have the power to review facts. As a possible compromise solution, it had been suggested that each case could be subject to a preliminary examination by a panel of three judges, who could then agree whether the case should be referred to a single judge.

49. Divergent views had been expressed as to the jurisdiction *ratione personae* of the future dispute and appeals tribunals. Discussions on that point had been similar to those regarding who would have access to the proposed administration of justice system. Concern had been expressed in the Working Group about the Secretary-General's proposal that *locus standi* should be conferred upon staff associations. It had been agreed that the issue required further consideration.

50. With regard to the jurisdiction *ratione materiae* of the proposed dispute tribunal, it had been observed that the language currently used in the draft elements of statutes entailed certain ambiguities. A representative of the Office of Legal Affairs had explained that there was no intention on the part of the Secretary-General to introduce any change in that respect.

51. The Working Group had not reached agreement on the grounds for appeal before the appeals tribunal. On the main disputed issue, whether the tribunal might consider only questions of law or whether it might also review facts, views had differed. Some delegations had felt that the appellate instance should not be given the power to review facts, while others had taken the view that parties should not be allowed to bring the facts twice before the dispute and appeals tribunals, but that the appellate body should be allowed to review serious errors in the categorization of facts, or consider material facts that the parties had been justifiably unaware of and hence unable to present to the dispute tribunal. It had been suggested that the appeals tribunal should at least be empowered to overrule the dispute tribunal's factual findings if they were clearly erroneous. A compromise proposal had been made in the Working Group. According to that proposal, while the jurisdiction of the appeals tribunal acting as an appellate body should be limited to questions of law, it should be granted the power to review facts to the extent that it found that the ascertainment of facts by the dispute tribunal had been arbitrary or based on an obvious error. Some delegations had expressed the view that any determination on that point would depend on the decision regarding the number of dispute tribunal judges who would decide a case in the first instance.

52. With regard to the remedy of specific performance, delegations had expressed the view that it required further consideration in determining the conditions under which the tribunals might order specific performance as an alternative to compensation. Some delegations had been concerned about any possibility of specific performance. Other delegations had questioned the Secretary-General's proposal that the power to order specific performance without compensation as an alternative remedy should be granted exclusively to the appeals tribunal.

53. Some delegations had expressed concerns about lifting the current limit of two years' salary for compensation, as suggested by the Secretary-General in his report. Some other delegations could agree to empower the tribunals to order a higher amount of compensation only in exceptional cases, to be determined in their respective statutes. It had been proposed that the two tribunals should be granted the power to issue decisions regarding the interpretation of their judgements or decisions upon the request of one of the parties.

54. Some delegations had expressed the view that further information was necessary regarding the Secretary-General's proposal that the dispute and appeals tribunals should be entitled to refer appropriate cases to the Secretary-General and heads of funds and programmes for "possible action to enforce accountability". Some delegations supported the Secretary-General's proposal that the dispute tribunal should be authorized to suspend action on a contested administrative decision upon request of the staff member concerned. However, the view had been expressed that the statute should make clear that the parties were not entitled by right to suspend a decision of the tribunal pending appeal.

55. Some delegations had expressed a preference for the establishment of a single registry for both tribunals, in the interests of cost-effectiveness. In their opinion, the functions of the registry should be limited to case management and should not include legal research or the preparation of summaries of facts for judges. Other delegations preferred separate registries for the two tribunals, on the grounds that the dispute tribunal would be decentralized and would function in other locations, whereas the appeals body would function in New York only. It had been observed that the functions suggested by the Redesign Panel (A/61/205, para. 131) for registries were different from the functions proposed by the Secretary-General in his report (A/62/294, para. 130). Concerning the question whether the two tribunals should have a single registry or separate registries, the view had been expressed that it would mainly depend on the type of functions assigned to a registry or registries. A single registry for both tribunals might suffice to deal solely with case management. Separate registries would be necessary if they were required to deal with case management and also assist the tribunals with legal research and the like.

56. Support had been expressed for the Secretary-General's proposal that the rules of procedure of the tribunals should be drafted by their judges in accordance with the statutes of the proposed tribunals. Some delegations favoured a role for the General Assembly regarding the adoption of the rules of procedure of the tribunals. Other delegations had stated that it was premature, at the current stage, to discuss

matters relating to the internal administration of the proposed tribunals.

57. With regard to transitional measures, it had been noted that at 1 January 2009, when the new system of administration of justice at the United Nations would begin to function, there would be an estimated 100 cases pending before the United Nations Administrative Tribunal. Those cases could either continue to be considered by the current Tribunal, in parallel with the new system, or be transferred to the new dispute tribunal. Some delegations had expressed preference for transferring these cases to the dispute tribunal, in the interests of cost-effectiveness and uniformity of proceedings, and in view of the fact that the staff members had lost their trust in the existing system.

58. Other delegations favoured preserving the old system in parallel with the new system because the transfer of pending cases to the new system at the beginning of its operation would overburden the new system and cause unnecessary delays in handling new cases. The point had been made that other organizations were using the current system and their views needed to be solicited before taking a decision. The view had also been expressed that litigants of pending cases should be encouraged to use informal systems for resolution of their disputes. Other delegations had said that it was premature to discuss transitional measures at the current stage, since ACABQ was considering the matter and had not yet come up with a concrete recommendation in that regard.

59. Negotiations on draft points of agreement would continue during informal consultations. If agreed, the points of agreement would be attached to a draft resolution or decision to be presented to the Sixth Committee for adoption.

The meeting rose at 4.20 p.m.

United Nations A/C.6/62/SR.18

General Assembly
Sixty-second session
Official Records

Distr.: General
16 November 2007

Original: English

Sixth Committee

Summary record of the 18th meeting
Held at Headquarters, New York, on Monday, 29 October 2007, at 10 a.m.

Chairman: Mr. Tulbure ..... (Moldova)

Contents

Agenda item 82: Report of the International Law Commission on the work of its fifty-ninth session

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

07-56748 (E)

The meeting was called to order at 10.25 a.m.

Agenda item 82: Report of the International Law Commission on the work of its fifty-ninth session (A/62/10)

1. **The Chairman** expressed the Committee's appreciation of the contribution that the International Law Commission continued to make to the progressive development of international law and its codification, in accordance with Article 13 of the Charter of the United Nations. At each regular session of the General Assembly, consideration of the Commission's report was a high point in the Committee's work.

2. **Mr. Brownlie** (Chairman of the International Law Commission), introducing the Commission's report (A/62/10), said that the feedback provided by the Sixth Committee, through its comments on the Commission's annual reports, as well as on its drafts and on specific questions, was a central aspect of the process of codification and progressive development of international law. The Commission relied on the Committee for advice from Governments and information on State practice that was not easily accessible to the public, particularly in the case of emerging practice, and welcomed the initiatives taken by the Committee to enhance the exchange of views on the report.

3. Referring first to chapter X of the report, he said that the Commission had continued to cooperate with other bodies: it had received the traditional visit from the President of the International Court of Justice and had maintained its long-standing involvement in the International Law Seminar. As the fifty-ninth session had been the first in the new quinquennium, the Commission had been particularly concerned with matters of programmes, procedures, working methods and documentation.

4. The Commission had decided to include two new topics in its programme of work, namely "Protection of persons in the event of disasters", and "Immunity of State officials from foreign criminal jurisdiction". The Working Group on the Long-Term Programme of Work had been established and would submit its final report at the end of the current quinquennium. It had already considered a number of possible topics, including one entitled "Subsequent agreement and practice with respect to treaties". In addition, support for the inclusion of the topic "The most-favoured-nation clause" in the work programme had been expressed by the Working Group set up on the subject, which had concluded that further work on the topic was justified and that the Commission could help to clarify the meaning and effect of the clause in the field of investment agreements.

5. The issue of honoraria, which affected the work of the Special Rapporteurs, continued to be of concern to the Commission; it urged the General Assembly to reconsider the matter with a view to their restoration. To mark the Commission's sixtieth anniversary, in 2008, it recommended the convening of a commemorative meeting, to be combined with a one-and-a-half-day session with legal advisers, which would be dedicated to the work of the Commission. The two events were planned to take place in Geneva on 19 and 20 May 2008 during the first part of the Commission's session, to be held from 5 May to 6 June; its second part would run from 7 July to 8 August 2008. He hoped that as many legal advisers as possible, representing all legal systems and cultures, would be able to attend the commemoration. The Commission also recommended that Member States, in association with existing regional organizations, professional associations, academic institutions and concerned members of the Commission, should be encouraged to convene national or regional meetings focusing on the work of the Commission.

6. The Commission continued to rely heavily on the Organization's legal publications, while being concerned about the delay in the publication of its own *Yearbook*. It proposed that a trust fund should be established to address that important issue, over and above the necessary budgetary allocations in the regular budget. In order to safeguard the integrity of the abundant documentation that it had itself produced, it had adopted guidelines on external publication of Commission documents (A/62/10, para. 381).

7. He concluded his remarks on chapter X by expressing the Commission's appreciation of the assistance given to it by its secretariat, the Codification Division of the Office of Legal Affairs. In addition to being involved in the substantive, procedural and technical servicing of the Commission, the Division offered an invaluable link between the Commission and the Committee. He also noted the work done by the Division to develop a website on the Commission's work and encouraged it to continue to update it.

8. Turning to the substantive chapters of the report, he said that chapter VI dealt with "Expulsion of aliens". In his second report on the topic (A/CN.4/573 and Corr.1), the Special Rapporteur had presented two articles setting out its scope and defining its constituent elements. In his third report (A/CN.34/581), he had presented five draft articles dealing respectively with: the right of expulsion; the principle of non-expulsion by a State of its own nationals; the principle of non-expulsion of refugees; the principle of non-expulsion of stateless persons; and the prohibition of collective expulsion. The Commission had decided to refer to the Drafting Committee draft articles 1 and 2, as revised by the Special Rapporteur during the session, as well as draft articles 3 to 7.

9. The importance and timeliness of the topic had been emphasized by several members of the Commission, in particular in the light of the phenomena of illegal immigration and refugee flows, and in the context of efforts undertaken by States to combat terrorism. A significant portion of the debate had centred on the delimitation of the scope of the topic and the use of terms. As for the measures and situations to be covered (scope *ratione materiae*), there had been general agreement in the Commission that "expulsion" for the purposes of the draft articles should cover not only "formal acts" but also situations in which a State, by its conduct, compelled an individual to leave its territory. It had been suggested that such conduct must involve a mode of compulsion that left the alien no option but to leave the territory of the State. Although some members had favoured the inclusion of denial of admission within the scope of the topic, at least with respect to aliens seeking admission into a State while already in an international zone of that State, several members had taken the view that denial of admission must remain excluded from it. Extradition had also been considered to be outside the topic, with the possible exception of an expulsion that would constitute disguised extradition. While some members had favoured the inclusion of extraordinary or extrajudicial transfers within the topic, some other members, including the Special Rapporteur, had been of the opinion that making such transfers subject to the rules on expulsion might compromise the efficiency of State cooperation in the fight against crime, including terrorism. On the question of the inclusion within the scope of the topic of expulsions occurring in situations of armed conflict, some members had taken the view that the Commission should refrain from dealing with an issue that was already covered by the law of armed conflicts. Some other members had favoured the inclusion of the expulsion of enemy aliens in situations of armed conflict; the Special Rapporteur, in particular, had considered that such expulsion was not governed by international humanitarian law instruments.

10. Concerning the scope *ratione personae*, several members had found that the term "*ressortissant*", proposed by the Special Rapporteur rather than "national" in opposition to the notion of "alien", was too broad and difficult to translate. The terms "national" and "*ressortissant*" would therefore be used as synonyms in the Special Rapporteur's future reports. It had been agreed to include aliens legally and illegally present in the territory of the expelling State, provided that due account was taken of the distinction between the two in the legal regime to be developed by the Commission, and to exclude aliens entitled to privileges and immunities under international law. Only natural persons would be covered by the draft articles. Conflicting views had been expressed on the possible inclusion of refugees, stateless persons and migrant workers and on the appropriateness of including, in a draft article on "Scope", a list of categories of aliens to be covered.

11. The need to define the notions of "territory" and "frontiers", contained in draft article 2, had given rise to some discussion in the Commission, and the Special Rapporteur had expressed the opinion that the concept of "zone" (for example a port, airport, or customs zone) was more appropriate than that of "line" to define the frontiers of a State in relation to expulsion matters.

12. With regard to draft article 3, the right of a State to expel an alien, whether inherent in State sovereignty, as suggested by the Special Rapporteur, or recognized by customary law, as indicated by some members, had not been disputed. Several members had expressed support for the general approach taken by the Special Rapporteur in trying to reconcile the right of a State to expel aliens with the relevant rules of international law, in particular those relating to the protection of human rights and the minimum standard for the treatment of aliens. Moreover, there had been some discussion on the best way to state in general terms that the right to expel was subject to several limitations in accordance with international law.

13. Some members had questioned the appropriateness of draft article 4, on prohibition of the expulsion of nationals, given the title of the topic, but broad support had been expressed for its inclusion. Moreover, while several members had observed that the "exceptional reasons" which, according to draft article 4, might justify the expulsion by a State of one of its nationals required clarification, some other members had challenged the existence of exceptions to the rule prohibiting the expulsion of nationals.

14. On the question of dual or multiple nationality, as well as the relevance of the "effective nationality" in that context, some members had felt that further study was required, while others, including the Special Rapporteur, had not felt it appropriate to address those issues, if the Commission's intent was to help strengthen the rule prohibiting the expulsion of nationals. Some other members had observed that only the deprivation of nationality as a possible prelude to expulsion, and not the expulsion of nationals as such, would fall within the scope of the topic. The Special Rapporteur would analyse further the issue of expulsion of persons having two or more nationalities, which could have an impact in the context of the exercise of diplomatic protection in case of unlawful expulsions; he was also planning to study, with the assistance of the secretariat, the question of deprivation of nationality as a prelude to expulsion.

15. Draft articles 5 and 6 dealt with the expulsion respectively of refugees and stateless persons. The Special Rapporteur had considered that the 1951 Convention relating to the Status of Refugees did not provide a comprehensive regime for the expulsion of refugees and that the Commission should address the question of the temporary protection and residual rights of de facto refugees. The appropriateness of including the two draft articles, while recognized by some members, had been questioned by others, in particular because of the risk of creating conflicting regimes. Similarly, the Special Rapporteur's proposal that the draft articles should include an express reference to "terrorist activities" as possible grounds for expelling a refugee or a stateless person had been rejected by several members, who had cited the lack of a universal definition of "terrorism" and the fact that measures of expulsion on grounds of terrorism were already covered under "national security". Some members had not agreed with the Special Rapporteur's proposal to do away with the distinction made in the 1954 Convention relating to the Status of Stateless Persons between such persons in a regular situation and those in an irregular situation in the territory of the expelling State. However, the proposal, in draft article 6, that the host State, when expelling a stateless person, should intervene in the search for a receiving State had been welcomed by some members as a contribution to progressive development.

16. Draft article 7, on collective expulsion, drew a distinction between collective expulsion in peacetime and collective expulsion in time of armed conflict. The key element for the definition of "collective expulsion", as identified in the case law of the European Court of Human Rights, was whether or not the case of each of the aliens had been subject to "reasonable and objective examination". According to the draft article presented by the Special Rapporteur, collective expulsion in peacetime was prohibited in absolute terms, as confirmed by various legal instruments and the case law of regional human rights bodies. As for collective expulsion in time of armed conflict, the draft article stated that collective expulsion of enemy aliens must be confined to individuals who were hostile to the host State. In the view of the Special Rapporteur, that limitation was consistent with an emerging trend in practice and doctrine. While the prohibition of collective expulsion in peacetime had found broad support in the Commission, some members had expressed doubts as to the universal or absolute character of that prohibition. Some members had emphasized that the determining factor was qualitative and not quantitative, and that due account had to be taken of the principle of non-discrimination and certain procedural guarantees. It had also been observed that the notion of "collective expulsion" was vague and that the Commission should rather focus on discriminatory expulsions. Furthermore, conflicting opinions had been expressed on the existence of a prohibition of collective expulsion of enemy aliens in time of armed conflict. In particular, it had been suggested that collective expulsion of enemy aliens should be permitted if such a measure was necessary to protect enemy aliens from a hostile environment.

17. The Commission would greatly appreciate receiving comments by Governments on several points related to the topic "Expulsion of aliens", in particular on such aspects as: expulsion of nationals; the situation of persons having one or more nationalities in the

context of expulsion; deprivation of nationality followed by expulsion; collective expulsion in time of armed conflict; the existence of a right of return of an alien unlawfully expelled; the distinction between expulsion and denial of admission; the legal status of illegal immigrants in international zones; and grounds for expulsion.

18. Chapter VII of the report covered the topic "Effects of armed conflicts on treaties". At its fifty-ninth session, the Commission had examined the Special Rapporteur's third report (A/CN.4/578), which contained an analysis of the comments made by Governments in the Sixth Committee the previous year, together with several recommendations for new formulations, the inclusion of new provisions and the deletion of a draft article. The entire set of draft articles proposed by the Special Rapporteur was to be found in the annex to his third report. Following its consideration of that report, the Commission had established a Working Group tasked with providing further guidance on several issues which had been identified in the plenary debate.

19. The Working Group had divided its work into three clusters: (a) matters related to the scope of the draft articles; (b) questions concerning draft articles 3, 4 and 7; and (c) other matters raised during the plenary debate. The Working Group had completed its consideration of the first two clusters, but had not had time to finish all the items in the third. The Working Group would therefore probably be re-established the following year in order to wrap up its work on issues arising in the context of draft articles 8, 9 and 12 to 14, which included the procedure to be followed for termination or suspension of a treaty due to the outbreak of an armed conflict and the possible severability of provisions.

20. On the Working Group's recommendation, the Commission had referred to the Drafting Committee draft articles 1 to 3, 5, 5 bis, 7, 10 and 11 in the form proposed by the Special Rapporteur, as well as a new draft article 4. The Working Group had also drawn up a series of conclusions to guide the Drafting Committee's consideration of the draft articles referred to it. The Drafting Committee was likely to commence its work on the draft articles the following year.

21. The Working Group's first points of guidance related to draft article 1 (scope). In that context, it was noted that the draft articles should apply to all treaties between States when at least one of the parties was engaged in an armed conflict and that the consideration of treaties involving international intergovernmental organizations should be left until later. At the Commission's request, the secretariat had sent a note to international organizations to ask for information about their practice with regard to the effects of armed conflicts on the treaties they had signed. The guidance given on draft article 2 (use of terms) was that, in principle, the definition of armed conflict should cover internal armed conflicts, with the proviso that States should be able to invoke the existence of internal armed conflicts as grounds for suspending or terminating a treaty only when the conflict had reached a certain level of intensity. That intensity threshold had been introduced to underpin the continuity principle laid down in draft article 3. Moreover it had been noted that occupation in the course of an armed conflict should not be excluded from the definition.

22. On the second cluster of issues, related to the content of, and interaction between, draft articles 3, 4 and 7, the Working Group had had no difficulty in enunciating the principle of non-automatic termination or suspension provided for in draft article 3, but had decided to reformulate draft article 4 on the indicia of susceptibility to termination or suspension of treaties in case of an armed conflict, which had given rise to differing views at earlier sessions of the Commission and the Sixth Committee. The new wording provided that, in order to ascertain whether a treaty was susceptible to termination or suspension in the event of an armed conflict, it was necessary to bear in mind both the rules on the interpretation of treaties contained in articles 31 and 32 of the Vienna Convention on the Law of Treaties and the nature and extent of the armed conflict, its effect on the treaty, the subject matter of the treaty and the number of parties to it.

23. With regard to the inclusion in draft article 7 of a list of categories of treaties whose object and purpose implied that they would continue in operation during an armed conflict, the Working Group had proposed that the two paragraphs of the draft article should be separated. The essence of paragraph 1 should be retained, with the *caveat* that its formulation should be aligned with that proposed for draft article 4 and that it should be located closer to that draft article. The Working Group had further advocated moving the list of categories from paragraph 2 to an appendix to the draft articles and indicating that the list was not

exhaustive, that various types of treaty might be subject to termination or suspension wholly or in part and that the list was based on practice, which meant that its contents might change over time. The Working Group had also suggested that the Drafting Committee should review the categories in the list in the light of views expressed in the plenary debate.

24. As for the third cluster, the Working Group had proposed the deletion of draft article 6 bis (the law applicable in armed conflict), since it raised an unexpectedly large number of issues. It had been felt that it would be better to handle its subject matter in the commentary to draft article 7. Furthermore, when the Drafting Committee considered draft articles 10 and 11 on the unlawful use of force, it should follow the policy laid down in articles 7, 8 and 9 of the 1985 Resolution of the Institute of International Law on that topic. It was not too late for Governments to submit their views on that proposal. In fact, it would still be useful if Governments were to supply information about their practice, especially their contemporary practice, with respect to the topic.

25. "Responsibility of international organizations" was the subject of Chapter VIII of the Commission's report. In 2007, the Commission had considered the Special Rapporteur's fifth report (A/CN.4/583). Following the pattern adopted in the articles on responsibility of States for internationally wrongful acts, that report had explored the content of the international responsibility of an international organization. On that basis, the Commission had been able to adopt 15 draft articles, namely draft articles 31 to 45, together with commentaries thereto. Those provisions comprised Part Two of the draft articles and spelled out the legal consequences for an international organization of the new legal relationship created by the commission by that organization of an internationally wrongful act.

26. Chapter I of Part Two contained draft articles 31 to 36 which set forth some general principles, most of which closely corresponded to the provisions included in the equivalent chapter of the articles on State responsibility. For example, draft articles 31 and 32, dealing with the legal consequences of an internationally wrongful act and continued duty of performance respectively, had reproduced the wording adopted in 2001, save that the term "State" had been replaced by "international organization", because the Commission had not found any reason to deviate from the language used in the articles on State responsibility. Draft article 33 addressed two separate, but interrelated, aspects of the breach of an international obligation which were not, however, per se legal consequences of such a breach, namely cessation of the wrongful act and assurances and guarantees of non-repetition. While practice in that area mostly concerned States, the Commission had not seen any merit in providing for a different rule in respect of international organizations. The same held true for draft article 34, which laid down the principle of reparation deriving from the *Factory at Chorzow* case. Despite the paucity of relevant practice in that area, most of it relating to the settlement of disputes concerning employment and contractual relationships, the Commission submitted that there was no reason to depart from the well-established principle as far as international organizations were concerned.

27. Unlike the preceding draft articles, draft article 35, which covered the irrelevance of the organization's rules, included a provision specific to the situation of international organizations. Whereas paragraph 1 enunciated the principle that an organization might not rely on its rules as justification for failure to comply with its obligations under Part Two, paragraph 2 stated that that principle was without prejudice to the applicability of the rules of an international organization in respect of the organization's responsibility towards its members. The Commission had felt that the special situation where the organization's rules might have a bearing on its responsibility towards its members should be addressed separately from the main rule reflected in paragraph 1. It might well be that the organization's rules modified the form of reparation it owed to its members. Making that point clear was the sole purpose of paragraph 2, which was also of relevance to any provision that might be formulated in future on *lex specialis*.

28. Draft article 36, concerned the scope of international obligations set out in Part Two. Although it reproduced the wording of the corresponding provision on State responsibility, it had prompted an extensive debate in the Commission. The main issue at stake had been whether there was any justification for limiting the obligations set forth in Part Two to those owed only to other organizations, States or the international community as a whole, without extending them to any other person or entity. In practice, a responsible organization might have more obligations

to such other persons or entities than a responsible State, as breaches by international organizations of their obligations often concerned employment and other areas directly affecting individuals. However, the Commission had considered it preferable to retain the solution adopted in 2001 for the sake of consistent legal interpretation. It was clearly understood that, as had been the case in 2001, the draft article in no way intended to downplay the rights of persons and entities other than States and international organizations. As pointed out in paragraph 2, Part Two was without prejudice to any right arising from the responsibility of an international organization, which might accrue directly to such persons or entities.

29. Chapter II of Part Two, dealing with reparation for injury, contained seven draft articles, namely draft articles 37 to 42, corresponding to articles 34 to 39 on State responsibility, and draft article 43, a supplementary article proposed by the Special Rapporteur in the light of the plenary debate.

30. Although practice concerning international organizations regarding the various forms of reparation and the issue of contribution to the injury was limited, there was no reason to consider that international organizations and States should be subject to different obligations as far as reparation was concerned. Hence, draft articles 37 to 41, which described in turn the various forms of reparation — namely restitution, compensation, satisfaction and interest — were closely modelled on the corresponding provisions on State responsibility. The Commission had devoted special attention to the question of satisfaction because, in the case of international organizations, that form of reparation might be used more frequently than restitution or compensation. It had also looked closely at the issue of humiliating forms of satisfaction, to which reference was made in draft article 40, paragraph 3. Although the possibility of being asked to provide such satisfaction was unlikely to occur in practice, it could not be completely excluded, especially in the context of the relationship between an organization and its member States. One hypothetical example might be that of a peacekeeping force whose acts could be attributed to the United Nations and, if wrongful, could entail its international responsibility. The injured party might request the Organization to give some form of satisfaction which would humiliate the State providing the force. If such a case ever arose, the Organization would be expected to consult the Member State concerned and to opt for some form of satisfaction which would not humiliate either the Organization or the Member State.

31. Draft article 42, concerning contribution to the injury, had attracted comments similar to those made in relation to draft article 36. The Commission contended that Part Two should cover only the responsibility of an international organization to a State, another international organization or the international community as a whole. That did not, however, mean that persons or entities other than States and international organizations could not be regarded as injured parties under other rules of international law, who might therefore potentially have contributed to the injury.

32. Draft article 43, entitled "Ensuring the effective performance of the obligation of reparation" had no equivalent in the articles on State responsibility and was essentially expository. It did not cover cases in which States and international organizations would be held internationally responsible for the act of an organization of which they were members. Its purpose was rather to remind those members that they were required to adopt all the appropriate measures in order to provide the organization with means for effectively fulfilling its own obligation to make reparation. The majority of the Commission held that the basis of that requirement was not to be found in general international law, but originated in the rules of the organization, whether or not it was expressly stipulated as being part of the obligation of cooperation. In the Commission's report, the text of draft article 43 was accompanied by a footnote reproducing a proposal placing the onus on the responsible international organization rather than on its members. Although that proposal had received some support in the Commission on the grounds that it might prompt international organizations to adapt their internal rules in order to meet their obligations under Part Two, the majority of members had considered that that requirement did not need to be restated, as it was already implied in the obligation to make reparation.

33. The last chapter of Part Two of the draft articles, namely Chapter III, was composed of two draft articles relating to serious breaches of obligations under peremptory norms of general international law. Draft article 44 stated that chapter III applied to infringements by international organizations of obligations under peremptory norms of general

international law. The risk of a breach by an international organization of an obligation under *jus cogens*, although unlikely, could not be ruled out. Hence there appeared to be no reason in that respect to draw a distinction between the situation of a State and that of an international organization.

34. Draft article 45 set out the particular consequences of a serious breach within the meaning of draft article 44 and it should be interpreted as laying down the general consequences applying as a minimum in the event of a serious breach by an international organization of an obligation under *jus cogens*. Some specific rules might indeed entail resort by States and international organizations to consequences other than those outlined in the draft article. It was clear, however, that draft article 45 did not require international organizations to take any action outside their competences and functions as defined by their constitutive instruments or other pertinent rules.

35. In conclusion, he drew attention to two questions related to issues connected with the implementation of an international organization's responsibility on which the Commission would welcome the views of Governments and international organizations. The first was whether international organizations were entitled to claim cessation and reparation from another organization responsible for a breach of an obligation owed to the international community as a whole. The other was whether an injured international organization intending to resort to countermeasures would encounter restrictions in addition to those listed in the articles on State responsibility.

36. **Mr. Laurent** (Finland), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that the International Law Commission's report and website were its main tools for reaching out to States, international governmental and non-governmental organizations and international lawyers. As the Commission's work was widely appreciated, its report was eagerly awaited every year. It was, however, questionable whether it really found its way to those who needed it most, namely Governments' legal advisers, who formed the primary audience of the Commission's proposals. The valuable information contained in the report should therefore be made more readily available.

37. While States undoubtedly did their best to respond with regard to the specific issues on which comments would be of particular interest to the Commission, the latter had not always received a sample of replies which were representative enough to serve as a basis for further conclusions. One way of making the Commission's reports more user-friendly would be to explain the background to each of the specific issues by providing summaries of the discussion surrounding those issues.

38. Some streamlining and restructuring would make the wealth of information contained on the website more accessible. Particular attention should therefore be devoted to ways of simplifying the structure of the site and enhancing its appearance.

39. The forthcoming sixtieth anniversary of the Commission would provide an excellent opportunity to raise awareness of its work and to actively reach out to States, as well as to international intergovernmental and non-governmental organizations. The Nordic countries welcomed the recommendations made with respect to the anniversary in the report.

40. With regard to the Commission's long-term programme of work, "Subsequent agreement and practice with respect to treaties" would be a most suitable topic for inclusion.

41. Although the Commission and States had been well-served by the comprehensive memorandum prepared by the Secretariat on the effects of armed conflicts on treaties (A/CN.4/550) and the Special Rapporteur's thorough reports (A/CN.4/552, A/CN.4/570 and A/CN.4/578), he wondered why the Commission was seeking to define the term "armed conflict" instead of retaining the word "hostilities" to be found in article 73 of the Vienna Convention on the Law of Treaties.

42. The principle of continuity of treaty obligations in the event of an outbreak of armed conflict, as provided for in draft article 3, was essential in order to safeguard the security of legal relations between States. He therefore welcomed the Working Group's proposal to widen the concept of an armed conflict to encompass situations of occupation and internal conflicts which had reached a certain threshold of intensity. He also commended the new formulation of draft article 4, because the parties' intention was not necessarily the best guide for ascertaining whether a treaty should be terminated or suspended in case of an armed conflict; the other criteria proposed by the Working Group should also be taken into account, in

particular the actual effect of the armed conflict on the application of the treaty. The decision to terminate or suspend a treaty should be made on a case-by-case basis in the light of all the relevant factors.

43. Similarly, in draft article 7, a reference to the subject matter of a treaty, rather than to its object and purpose, would offer a more practical solution when drawing up the list of treaties to be included in the annex. The deletion of article 6 *bis* was warranted, since its wording did not adequately reflect the complexity of the issue in question. The substance of that draft article should be moved to the commentaries, as the Working Group had suggested. At the current stage of work, the scope of the draft articles should exclude treaties concluded by international organizations.

44. **Mr. Zinsou** (Benin), speaking on behalf of the African Group, said that States must abide by the rules of international law when they exercised their right to expel aliens from their territory. For that reason, the draft articles prepared by the Commission must secure respect for aliens' rights and fundamental freedoms by making the mass expulsion of aliens illegal. The draft articles should stipulate that expulsion must not rest on discriminatory grounds such as nationality, religion or ethnicity and that it must not be politically motivated. States should exercise their right to expel aliens cautiously, especially when the people in question were refugees, and they should pay due heed to the reasons why foreigners had fled from their home country.

45. When the Commission studied the effects of armed conflicts on treaties, it should scrutinize the effects of internal armed conflicts, foreign occupation and aggression on States' treaty-based obligations.

46. While international organizations must be held accountable for their wrongful acts, the approach taken to the responsibility of international organizations for such acts should be different to that adopted in respect of States, because of the disparate nature of their obligations under international law.

47. As for the new topics to be included in its work programme, the Commission should investigate questions which had a beneficial impact on developing countries, more particularly the protection of persons in the event of disasters and the most-favoured-nation clause.

48. **Mr. Trauttmansdorff** (Austria) said that his delegation commended the Secretariat for its comprehensive analysis of national legislation on the expulsion of aliens (A/CN.4/565), which was a precondition for the Commission's successful codification of the topic. In draft articles 1 and 2, the scope to the draft articles and the definition of "alien" should be based on the notion of "national" rather than the somewhat broader and less precise notion of "*ressortissant*". With regard to draft article 4 on non-expulsion by a State of its nationals, Austria was of the opinion that the prohibition against the expulsion of nationals was unconditional and absolute. The principle set out in paragraph 1 of draft article 4 should not be qualified, as it currently was by paragraphs 2 and 3, which referred to "exceptional reasons". Any such exception would be inconsistent with various human rights instruments and those two paragraphs should therefore be deleted.

49. Draft articles 5 and 6 on the non-expulsion of refugees and of stateless persons, should not make an explicit reference to terrorism; any terrorist activity by an asylum-seeker or a stateless person would be covered by the reference to "national security or public order". Paragraph 1 of draft article 5 should be consistent with the 1951 Convention relating to the Status of Refugees and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and therefore should include a reference to the principle of non-refoulement to make it clear that the draft articles did not intend to modify the established rules and existing human rights guarantees under international law. In addition, language should be included to the effect that a refugee must not be expelled to a country where there were substantial grounds for believing that he or she would be in danger of being subject to torture or other forms of cruel, inhuman or degrading treatment or punishment, regardless of whether such acts were committed by public authorities or non-State actors. Such a provision would reflect established international practice.

50. On the topic of the effects of armed conflict on treaties, his delegation agreed with the Working Group of the Commission that the draft articles should apply to all treaties between States at least one of which was a party to an armed conflict; that should be clearly indicated in draft article 1 on scope. With regard to the definition of "armed conflict", it was his delegation's

long-standing view that the articles should deal only with international armed conflicts; the definition could be based on the formulation in the judgment of the International Tribunal for the Former Yugoslavia in the case of The *Prosecutor v. Duško Tadić a/k/a "DULE"*. It could encompass situations of occupation as addressed by the 1907 Hague Regulations concerning the Laws and Customs of War on Land, the 1949 Geneva Conventions and the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

51. In draft article 3 on non-automatic termination or suspension, the term "ipso facto" better reflected the legal situation than the term "necessarily", since it would make it clear that any break in treaty relations did not happen automatically but required a deliberate act by a State party. Draft article 4 raised the question of whether the intention of the parties at the time the treaty was concluded should be decisive for the susceptibility to termination or suspension of a treaty in case of an armed conflict. In any case, the provision would have to be brought into line with draft article 7, and, if the reference to "object and purpose" was retained, it would be useful to align it with the Commission's draft guidelines on reservations to treaties. In draft article 6 bis the term "standard-setting treaties" had no commonly accepted meaning; the article should be either deleted or reformulated.

52. With regard to the topic of the responsibility of international organizations, his delegation shared the view expressed during the Commission's debate that the draft articles did not sufficiently take into account the great variety of international organizations and their statutory and de facto relations with their member States.

53. Among the new articles proposed, draft article 43 on ensuring the effective performance of the obligation of reparation was of particular concern. In its current form, it clearly did not reflect customary law or State practice but constituted progressive development of international law. Despite the explanation that it was of an expository character, it was one of the key articles affecting the relation between the responsibility of an organization and the legal effects for its members and it therefore required further deliberation.

54. An international organization might be unwilling or unable to compensate an injured party because it was not enabled to do so by its members. However, international practice did not seem to support an obligation for member States to bear the financial consequences of an illegal or *ultra vires* act attributed to the international organization, and his delegation would not support such an attempt to "pierce the corporate veil" and hold the members responsible. On the other hand, member States that enabled an international organization to act on the international plane were accepting the risk that the organization might violate international law. Since that risk could not be left with the injured party, it was reasonable that the risk should be borne by the collectivity of the members, although the responsibility to compensate was the organization's. In principle, therefore, his delegation supported the idea of inserting a provision to ensure that the organization was sufficiently equipped by its member States to enable it to make full reparation to an injured party in accordance with draft article 34. The current wording of draft article 43 was, however, out of line with the logic of the draft articles, which concerned the responsibility of international organizations, not of States. Moreover, it did not clearly establish a legal obligation on the part of member States to provide the organization with the means for effectively fulfilling its obligations under draft article 34. His delegation therefore favoured the proposal mentioned in paragraph (4) of the commentary to the draft article, namely, to state expressly that "the responsible international organization shall take all appropriate measures in accordance with its rules in order to ensure that its members provide the organization with the means for effectively fulfilling its obligations under this chapter". The rationale of the proposal was to commit the responsible organization to organizing its budget in a manner which ensured the satisfaction of an injured party. At the same time, it would oblige the members of an international organization to provide the means to meet the financial consequences of illegal activities or *ultra vires* acts attributed to their organization. If the responsible organization were to be dissolved before compensation was paid, the proposal would make possible proper budgetary liquidation of the outstanding liability.

55. **Mr. Márslco** (Argentina) said his delegation hoped that the Commission's efforts to codify the international rules on the expulsion of aliens would lead to a new regime in which the rules and principles of general international law would take the place of

discretionary decisions by States in confronting the increasingly difficult problem of international movement of persons.

56. With regard to specific draft articles, there was no need to use the term "*ressortissant*" in draft articles 1 and 2, since the term "national" was more precise and was generally accepted in international law. In draft article 3, the limits on the right of expulsion in paragraph 2 were too vague and general, since international law set precise limits on expulsion, for instance, in the case of refugees.

57. Draft article 5 on non-expulsion of refugees presented certain problems. In any attempt at codification, clearly aimed at limiting abusive restrictions on the international movement of persons, it was essential not to harm the most vulnerable categories of aliens, such as refugees, whom international law sought to protect. The various international sets of rules relating to the protection of fundamental human rights, among them the international rules governing refugees, were closely interrelated and were in the process of convergence. Draft article 5 appeared to be attempting to redraft or amend a body of rules generally accepted by the international community. His delegation agreed with the view that the proposed language, especially the *in limine* determination that paragraph 2 entitled the receiving State to make regarding the purpose of the refugee's application, went beyond the limits of the 1951 Geneva Convention. As was stressed by the Office of the United Nations High Commissioner for Refugees in its *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, a person "does not become a refugee because of recognition, but is recognized because he is a refugee". From the moment an application for refugee status was submitted, principles such as *non-refoulement* applied.

58. Moreover, his delegation was concerned about the proposed reference to terrorism in draft article 5, paragraph 1, as grounds for expelling a refugee. The mere existence of an extradition request alleging the commission of terrorist acts should not be sufficient grounds for the rejection *in limine* of an application for refugee status. The application should receive consideration in accordance with the principles of due process and legal guarantees, and the principle of *non-refoulement* should be respected. Therefore, his delegation would prefer to have the Commission refrain from proposing new rules about refugees and limit itself to a simple provision that the draft articles were without prejudice to the rules and principles of international law relating to refugees.

59. With regard to draft article 7 on the prohibition of collective expulsion, his delegation was in favour of the general principle enunciated in paragraph 1 but doubted that the exception set forth in paragraph 3 was consistent with international humanitarian law. In general, it would urge the Commission to proceed cautiously when elaborating rules related to fundamental principles of international law.

60. In relation to the topic of the effects of armed conflicts on treaties, it was important to bear in mind that information on State practice involving bilateral or multilateral treaties would only be impartial if the views of all the States involved in the particular case were obtained. The analysis of which obligations in a given treaty must continue to be fulfilled during or after armed conflict should be sharply differentiated from the analysis of the factual or legal situations recognized by the parties at the time the treaty was concluded. The principle of good faith required that such recognition could not be altered by armed conflict. The recognition of the existence of a dispute, for example, by a State party to that dispute could not be altered by armed conflict. The principle of the continuity of treaties, set forth in draft article 3, was fundamental. His delegation encouraged the Commission to continue its work on the topic along those lines and to approach the law of treaties in the light of the prohibition against recourse to the threat or use of force in the Charter of the United Nations.

61. The draft articles on the responsibility of international organizations would be highly useful to States and international organizations, especially in view of the complexity of the topic and the scarcity of relevant practice it. His delegation approved of the use of the articles on State responsibility as a template wherever applicable. The generality of the schema made it applicable to a wide variety of international organizations.

62. Of the 14 new draft articles in Part Two, his delegation supported the wording of draft articles 31 to 34 on general principles, which were based on the articles on State responsibility, and approved of the approach taken in draft articles 35 and 36, which

included provisions specific to international organizations. It agreed that there was no reason not to borrow language from the articles on State responsibility for draft articles 37 to 42 on forms of reparation. With regard to draft article 43, the obligation to provide a responsible organization with the means to make reparation depended on the internal rules of the organization. The basic principle that the organization had a distinct legal personality separate from that of its members should be maintained; in that light, any concurrent or residual responsibility of a Member State would depend on the specific nature of the organization, its constituent instruments, its established practice and the other elements mentioned in draft article 4, paragraph 4, defining the "rules of the organization". However, his delegation considered it necessary to include a provision, or at least a recommendation, that international organizations should take appropriate measures in advance to meet future obligations to make reparation.

63. His delegation supported the formulation of draft articles 44 and 45 based on the corresponding provisions of the articles on State responsibility, with the proviso regarding draft article 45 that the obligation of an international organization to cooperate to bring to an end through lawful means any serious breach must take into account the ability of the organization to act depending on its mandate.

64. In response to the question posed by the Commission in connection with draft article 48, to be considered during its next session, his delegation thought that an international organization might be entitled to bring a claim if a breach of an obligation owed to the international community as a whole was committed by another international organization, provided the first-mentioned organization had a mandate to defend the general interests of the international community. The question of the resort to countermeasures by an international organization should be approached with great caution; if an international organization were recognized as having that right, it could only be because the organization had a close connection to the right protected by the obligation breached.

65. Lastly, his delegation supported the commemoration of the Commission's sixtieth anniversary in 2008.

66. **Mr. Kamal** (Egypt) said that his delegation supported the proposal of a commemorative meeting with legal advisers in honour of the Commission's sixtieth anniversary. On the topic of expulsion of aliens, this delegation agreed with the principle set forth in draft article 3, paragraph 2, that States, in exercising the right to expel aliens, must abide by their obligations in accordance with the fundamental principles of international law; however, the Commission should identify those fundamental principles. There was an increasing tendency on the part of States, in their efforts to combat terrorism or to stem a flood of illegal immigration, to expel aliens resident in their territory without respect for fundamental human rights norms set out in international agreements. States should refrain from mass expulsions and from expelling aliens without objective evidence or for discriminatory reasons based on religion, culture or ethnicity.

67. In the case of refugees, Egypt complied with the 1951 Geneva Convention and made a general practice of coordinating with the Office of the High Commissioner for Refugees when taking decisions to expel refugees resident in its territory.

68. With respect to the draft articles on the effects of armed conflicts on treaties, his delegation affirmed the importance of ensuring the stability of treaty relations between States in accordance with the 1969 Vienna Convention on the Law of Treaties, not only during peacetime but also during armed conflicts. Since parties concluding a treaty in time of peace did not normally provide for what would happen in the case of armed conflict, objective criteria other than the intention of the parties were needed to determine the enforceability of treaties during armed conflicts. That included the need to distinguish among the various types of treaties. Treaties normally implemented in peacetime, such as trade and technical assistance treaties, might be suspended during armed conflicts, even if the parties had not expressly stated their intention to do so. Treaties normally enforced in wartime, such as those relating to humanitarian law or *jus cogens* rules, remained enforceable during armed conflict even if the parties had announced otherwise. Humanitarian assistance instruments, especially those concerning natural disasters, should be studied to determine their enforceability during armed conflict.

69. His delegation urged the Commission to study the effects of foreign occupation on the enforceability of

international treaties to which the State under occupation was a party and the obligation of the occupying Power to respect and implement such treaties. The Commission should also examine the difference in the legal effects of treaty obligations for the aggressor State and for the State subject to aggression, owing to the difference in their obligations under the Charter of the United Nations. The Commission should likewise study the effects of internal armed conflicts on the ability of a State to fulfil its treaty obligations.

70. In drafting articles on the responsibility of international organizations, the Commission should be careful when borrowing language from the articles on State responsibility. On the issue of reparation, a distinction must be made between the obligations of States as members of an international organization and the obligation of the organization itself. Consequently, draft article 43 should be amended so that either it referred only to the responsible international organization, which had independent legal personality under international law, or it referred to the respective obligations of the responsible organization and its member States to make reparation for injury in accordance with international law and the constituent instrument of the organization.

71. His delegation welcomed the Commission's decision to include in its programme of work the topics "Protection of persons in the event of disasters" and "Most-favoured-nation clause", in view of their importance to developing countries. However, the Commission should be cautious in its study of the topic "Immunity of State officials from foreign criminal jurisdiction", since unambiguous rules on the subject already existed, particularly in the Vienna Convention on Diplomatic Relations. It was one of the manifestations of State sovereignty that State officials should be prosecuted in their national courts.

72. **Mr. Liu** Zhenmin (China) said, with regard to the expulsion of aliens, that a wealth of legislation and practice on the treatment of aliens had accumulated at the international level. The International Law Commission should, therefore, have focused more on the codification of existing international law. As for the scope of the draft articles, the text as it stood dealt only with aliens who had entered a given territory. His delegation believed, however, that aliens within zones of immigration control should be accorded the same basic human rights protection as those already within the territory, even if their status was different, and should, therefore, be included within the scope of the topic. At the same time, a basic premise of the draft articles should be the State's right of expulsion as a general principle, while the prohibition of expulsion should be an exception.

73. In principle, his delegation endorsed the provisions on non-expulsion of refugees and stateless persons and on the prohibition of collective expulsion (draft articles 5, 6 and 7). The provisions on non-expulsion of refugees should, however, be formulated in strict conformity with the 1951 Convention relating to the Status of Refugees and its Protocols; the scope of the definition of the term "refugees" should not be expanded. The term "collective expulsion" should be clarified, with due regard for the different treatment appropriate to the particular circumstances of the persons facing expulsion.

74. With regard to the responsibility of international organizations, he noted that the draft articles were closely modelled on the draft articles on "State responsibility", albeit with amendments and additions, where necessary to reflect the special situation of international organizations. A number of provisions were, however, based on unwarranted assumptions, with the result that the commentary seemed inadequate and the analysis and exposition of specific instances insufficient. The draft articles should be supported by more references in the commentary to their legal and factual basis. The Commission should not lose sight of the primary rules of international law relating to the responsibility of international organizations. Since a breach of international obligations was a precondition for incurring responsibility, the Commission should first establish the status of international organizations, which, unlike States, did not have general rights and obligations under international law but only specific ones deriving mainly from their respective statutes and regulations. Once the obligations of international organizations were clearly identified, it would be possible to address the question of their responsibility.

75. With regard to the effects of armed conflicts on treaties, his delegation believed that the definition of armed conflicts in draft article 2 should not include internal armed conflicts as armed conflicts having effects on treaties. There was a qualitative difference between internal and international armed conflicts. The outbreak of an armed conflict between States would, as a matter of course, have an effect on treaties between

them. Parties to internal conflicts, however, were not States and their inclusion in the scope of the definition therefore had neither a legal nor a factual basis.

76. His delegation endorsed draft article 3, which stated that the outbreak of an armed conflict did not necessarily terminate or suspend the operation of treaties between the parties. That provision was a reflection of international practice since the Second World War regarding the continuity of treaties, as opposed to the traditional concept that a treaty was automatically terminated or suspended in case of an armed conflict. The draft article would contribute to the stability and healthy development of international relations.

77. With regard to susceptibility to termination or suspension of a treaty in case of an armed conflict, which was covered by draft article 4, his delegation agreed that the intention of the parties at the time that a treaty was concluded should be used as the main criterion for such susceptibility. Other relevant factors, such as the object and purpose, the provisions and the nature of the treaty concerned should, however, also be taken into account.

78. His delegation believed that the effect of the lawful use of force on the operation of treaties was different from that of the unlawful use of force. It endorsed the principle set out in draft article 10 that a State exercising its right of individual or collective self-defence, in accordance with the Charter of the United Nations, was entitled to suspend, in whole or in part, the operation of a treaty incompatible with the exercise of that right. States using force unlawfully were not entitled to terminate or suspend the operation of a treaty, since they might benefit from their unlawful action.

79. His delegation supported the inclusion in the Commission's programme of work of the topic "Immunity of State officials from foreign criminal jurisdiction". Work on the topic should focus on the codification of the rules of existing international law and should be based on the general principle of customary international law whereby State officials had immunity from foreign criminal jurisdiction. The denial of such immunity should be considered an exception.

80. **Ms. Popova** (Bulgaria) said that, in drawing up the draft articles on responsibility of international organizations, the International Law Commission had rightly used the articles on State responsibility as a starting point, since the aim of both sets of rules should be to introduce certainty and clarity into the most typical situations and thus serve as a guide for any grey areas or for rare situations. Nevertheless, each of the two sets of articles should be comprehensive and self-contained. According to draft article 1, paragraph 2, however, the draft articles on responsibility of international organizations covered the responsibility of a State for the internationally wrongful act of an international organization. Thus, if that paragraph and draft articles 25, 26, 27 and 28 were retained, the rules relating to State responsibility should be incorporated in two separate instruments, whose status might eventually differ. Furthermore, the focus of the draft articles currently under consideration might be shifted from the issue of responsibility to that of committing a wrongful act. The provisions on the responsibility of a State for the internationally wrongful act of an international organization should therefore be incorporated within the articles on State responsibility. As for the use of terms, it would be more appropriate to list all the definitions in draft article 2 rather than to scatter them throughout the text.

81. With regard to draft article 3, paragraph 2, her delegation had doubts about the provision that conduct entailing international responsibility might consist of an omission. As stated in the written comments by the United Nations Educational, Scientific and Cultural Organization, omission might be the result of failure to take a decision within a given organization owing to lack of support from its members. In such cases, omission should not be punishable; it should entail responsibility only if the organization failed to take action on a legitimately taken decision.

82. In draft article 8, paragraph 2, it was redundant to refer explicitly to the rules of the international organization, since paragraph 1 already covered all sources of obligations, including the internal rules of the organization. Moreover, paragraph 2 drew no distinction between the internal rules of an organization that formed part of international law and those that did not.

83. In view of the recent practice of giving the term "self-defence" a broader meaning when referring to action by United Nations forces the wording of draft article 18 should be reviewed. Her delegation could not accept that international organizations could be in a position to exercise the right to self-defence. Even in peacekeeping operations, for example, they would be acting within a mandate adopted by the Security Council, and that did not constitute self-defence.

84. With regard to draft articles 34 and 35, her delegation accepted the Commission's general approach. It welcomed the distinction made in the Special Rapporteur's report between the obligations owed by international organizations to members and those owed to non-members. On the question of whether there was an obligation on member States to support an international organization if it lacked the funds to meet its obligation to compensate an injured party, her delegation believed that financial inadequacy could not, per se, absolve the organization from the legal consequences of its responsibility under international law. At the same time, member States had an obligation to provide the organization with the means to carry out its activities, including those that had led it to incur responsibility towards a third party. Significant though the issue was, the mechanism for acquiring such funds should ultimately depend on the internal rules of the organization.

85. In draft article 39, some of the examples provided in the Special Rapporteur's report fell outside the scope of the topic, since they related to compensation paid by international organizations to individuals rather than to States or other international organizations.

86. Turning to the topic "Effects of armed conflicts on treaties", she commended the report by the Working Group which had streamlined the debate most effectively. The Commission's work would, however, be more practically orientated if treaties involving international organizations were included within the scope of the topic, given their ever-increasing number.

87. It was her delegation's view that an outbreak of hostilities had the same effect on treaties that were in force and treaties that were applied provisionally. The draft articles should reflect that fact. Article 25 of the Vienna Convention on the Law of Treaties dealt only with the termination of a provisionally applied treaty due to the declared intention of a State not to become party to that treaty; it could not apply to the termination of such a treaty because of an armed conflict.

88. Her delegation noted with satisfaction the decision to include internal armed conflicts in the definition of the term "armed conflict" in draft article 2. That was the right course of action, since, over the past few decades, internal armed conflicts had significantly outnumbered international ones. There was no danger of dividing opinion on the issue among Member States, since the draft articles did not deal with the legality of armed conflicts.

89. The most important aspect of the draft articles was the indicative list of categories of treaties the object and purpose of which involved the necessary implication that they continued during an armed conflict. The list of categories would be even more useful if it were extended to include treaties codifying rules of *jus cogens* and treaties delineating land and maritime boundaries, which, by their nature, also belonged to the category of permanent regimes.

90. **Ms. O'Brien** (Ireland), commenting on the draft articles on responsibility of international organizations, said, firstly, that although no draft article had yet been formulated on the recognition of the separate international legal personality of an international organization, it had been suggested that recognition of such personality by an injured State was necessary before the organization had an obligation to make reparation for the injury caused. The question raised important legal and practical considerations. The international legal personality of an organization — which was a prerequisite to its having international responsibility under the draft articles — might arise even in the absence of express provisions to that effect in its constituent instrument. In its 1949 advisory opinion on *Reparation for Injuries Suffered in the Service of the United Nations*, the International Court of Justice had held that the separate legal personality of an international organization might be inferred in certain circumstances from the competences, powers and purposes that the member States had given to it. To require an injured State to recognize the legal personality of an international organization before that organization was obliged to make reparation might thus be at odds with the Court's opinion. It also raised the practical consideration of how to determine whether such recognition had occurred.

91. Secondly, with regard to draft articles 34 and 37-40, which outlined the duty of an international organization to make reparation and the forms that such reparation might take, a difficult question arose as to whether member States were under an obligation to provide an international organization, in any circumstances, with the necessary resources — financial or otherwise — to make reparation. The Special Rapporteur had correctly pointed to the lack of practice evidencing any obligation on member States to make extraordinary payments to finance reparations. However, some obligation on the part of member States should be included in the draft articles as a rule of progressive development, in view of the importance of reparations to an effective regime of responsibility. To

do otherwise might suggest that States could escape liability by acting collectively through an international organization.

92. Her delegation welcomed the introduction of draft article 43 which related to the effective performance of the obligation of reparation. It had some reservations about the current wording, however, which provided that members were required to take all appropriate measures "in accordance with the rules of the organization". Although primacy should be given to any internal rules of an organization that might be decisive in determining the means by which the constituent member States ensured that reparation could be made, her delegation's concern was that a member State might seek to rely on such internal rules to escape responsibility, in a case where, for example, the rules expressly prohibited extraordinary financial contributions from members to finance reparations. She therefore urged the Commission to re-examine the text of the draft article.

93. With regard to draft article 35, the Special Rapporteur rightly made a distinction between obligations owed by international organizations to their members and those owed to non-members. Whereas the rules of an organization in relation to non-member States were similar to the internal laws of a State and could not be relied upon as justification for failure to comply, the situation with regard to member States was that the rules of the organization might well be relevant. Even if there was little practice to support the principle, it was sound as a matter of progressive development, since it was fully consistent with the structural principle of consent that underlay international law.

94. Thirdly, draft articles 44 and 45, which concerned the serious breach of obligations under peremptory norms of general international law, were incompatible with their counterparts in the articles on State responsibility. Admittedly, draft article 44 corresponded to article 40 of the latter articles; but draft article 45 addressed the consequences for other international organizations and for States of a serious breach by an international organization, whereas article 41 on State responsibility addressed only the consequences for other States, with no reference to international organizations. It was a lacuna that could cast doubt on the obligations of an international organization in the event of a serious breach of a peremptory norm by a State. True, the draft articles, as currently formulated, were not intended to exclude such obligations arising under customary international law. In the interests of comprehensive codification, however, her delegation proposed that the scope of draft articles 44 and 45 should be revisited to address the consequences for an international organization of serious breaches of peremptory norms either by a State or by another international organization.

95. Any consideration of the duty of States and international organizations to cooperate in bringing a serious breach to an end should include a recognition that they differed greatly in their capacity as international legal persons. The advisory opinion of the International Court of Justice on *Reparations for Injuries Suffered in the Service of the United Nations* distinguished between States, which possessed the totality of international rights and duties recognized by international law, and organizations, whose rights and duties depended on their purpose and function. An international organization might thus be unable to respond to a *jus cogens* breach in the same way as a State. She therefore welcomed the Commission's statement that draft article 45 was not intended to confer on an international organization duties that exceeded its mandate.

96. Fourthly, the acknowledged difference in the capacity of international organizations and States highlighted the need to consider the diversity of international organizations in formulating the draft articles. At the same time, as illustrated by the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, there were identifiable common principles of international law applicable to all international organizations. In that connection, her delegation accepted the Special Rapporteur's view that the draft articles were formulated in general terms and that the implementation of the principles therein might differ from one international organization to another, having regard to special rules of international law. It welcomed the suggestion that a text might be included, along the lines of article 55 of the articles on State responsibility, to address the issue.

97. **Mr. Taksøe-Jensen** (Denmark), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that the fifth report of the Special Rapporteur on responsibility of international organizations (A/CN.4/583) had provided a helpful overview of a complex subject and provided a framework for the Commission's work. It was to be hoped that States would provide the Commission with further examples of practice and case law. The Nordic countries supported the continued reliance on and

reflection of the provisions of the articles on State responsibility in the elaboration of the draft articles on responsibility of international organizations. The nature of international organizations, however, as the Commission itself recognized, meant that a number of modifications had to be made. The role and function of such organizations in international cooperation should be given careful consideration.

98. The Nordic countries were in broad agreement with the provisions of draft articles 31 to 45. With regard to draft article 43, however, although they could accept the inclusion of the article, as suggested by the Drafting Committee, if only as a general principle of international law, it did not follow that a subsidiary responsibility arose for member States when the organization in question was not in a position to provide compensation. As stated in the draft article, the measures to be taken by member States on providing the organization with funds were governed by the internal rules of that organization. While a general duty for member States to provide funds might be implied in the internal rules of the organization, those rules did not confer rights on possible third parties to which the organization might owe obligations.

99. With regard to the two specific questions posed by the Commission, the Nordic countries had only very preliminary comments. On the question of whether, in the case of the breach by an international organization of an obligation owed to the international community as a whole, there should be a right for other international organizations to make a claim of cessation and reparation to the injured party, the Nordic countries considered that it would be useful to include in the draft articles an article reflecting article 48 of the articles on State responsibility. Since international organizations had an international legal personality they should, in principle, be in a position to make a claim to bring the violation of basic obligations to an end.

100. At the same time, the restricted mandate and purpose of a number of international organizations should be borne in mind, since in that regard they differed fundamentally from States. It would be a mistake, too, to expand their mandate indirectly by giving the article parallel to article 48 on State responsibility too broad a scope. One possibility would be to restrict the entitlement of international organizations to make claims relating to *erga omnes* obligations in such a way that they could claim only in relation to obligations falling within the scope of the mandate of the organization in question. It might not be easy to define such a rule, however, or to determine in a given case whether a claim could be said to be within the scope of the organization's mandate.

101. With regard to the question of the right of international organizations to resort to countermeasures, the most appropriate approach would be to echo articles 49 to 53 of the articles on State responsibility. A preliminary consideration of the question had not led the Nordic countries to identify any reasons for affording international organizations more restricted or indeed broader access to countermeasures than that afforded to States.

102. Lastly, he drew attention to a decision of 2 May 2007 by the European Court of Human Rights in the cases *Agim Behrami and Bekir Behrami v. France* and *Ruzdi Saramati v. France, Germany and Norway*, which touched on some interesting issues relating to the responsibility of international organizations. The cases concerned certain acts and omissions by the international forces in Kosovo, the question being whether a number of European States that had provided personnel were responsible under the European Convention on Human Rights for those acts. The Court had found that it was not competent *ratione personae* to review the complaint against those States, because the acts in question were in fact attributable to the United Nations, though that was not to say that the United Nations should be responsible for all actions carried under its mandate. It was not clear to what extent the Court would have reached the same conclusion with regard to acts that took place during other peacekeeping operations under Chapter VII of the Charter of the United Nations. It would probably depend on the particular command and control structure, and the legal framework of each individual operation. The Sixth Committee should, in the future, consider the issue of responsibility for the United Nations and other international organizations in such complex situations and the question of striking the right balance between the responsibility of organizations and their member States in the context of peacekeeping operations.

The meeting rose at 1 p.m.